Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OLGA OSTOPOSIDES, et al., IN PRO SE
Petitioners,

v.

RICHARD GLIMP M.D. et al.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

OLGA OSTOPOSIDES, RENNA OSTOPOSIDES, HARRY OSTOPOSIDES, SOCRATES OSTOPOSIDES,
Petitioners in Pro Se
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QUESTION PRESENTED

The Due Process clause of the Fourteenth Amendment of the U.S. Constitution, according to this U.S. Supreme Court Guarantees **All Civil litigants** the right to an Attorney. The Judge allowed Petitioners Attorney to withdraw on the eve of trial and Refused to change the trial date so that another Attorney could step in and Represent Petitioners, which left Petitioners **unrepresented** at their Motion Summary Judgment Hearing, and there the court disposed of Petitioners case. The questions presented are:

1) Whether the courts Refusal to change the trial date so an attorney could step in, constituted a Denial of a hearing and therefore a Denial of Due Process in the Constitutional sense.

2) Whether the Appellate Courts ruling stating: "We know of no authority which even suggests a Plaintiff in a Medical Mal Practice Case is entitled to be represented by counsel, backed by Published Appellate Court opinions that state: "As a general rule, there is no Due Process right to counsel in civil cases" contradicts and violates all Civil litigants Due process rights under the fourteenth Amendment of the U.S. Constitution.

3) Whether these civil Petitioners, who were forced into an involuntary Pro Per **indigent** status, as well as **Every** civil indigent in this nation has a right under the Due Process Clause of the U.S. Constitution to have a court appointed Attorney, and does not have to pay **any costs** under federal statute 28 USCA section 1915.

PARTIES TO THE PROCEEDING

Olga Ostoposides, Renna Ostoposides, Harry Ostoposides, and Socrates Ostoposides, in pro. Per., for Plaintiffs and Appellants.

Schmid & Voiles and Suzanne De Rosa for Defendants and Respondents Richard Glimp, M.D., Benjamin Rosin, M.D., James Ding, M.D., R. Michael Wyman, M.D., Robert Grossman, M.D., Jerome Unatin, M.D., Bruce Jackson, M.D., Thomas Lawrence, M.D., ID Med, COR Healthcare Medical Associates, Gary Kissell, M.D., and Michael Nakata, M.D.

Bonne, Bridges, Mueller, O'Keefe & Nichols, Carmen Vigil and Sabrina D. Corsa for Defendants and Respondents Frank An, M.D., Marina Raikhel, M.D., and Torrance Family Practice Medical Group, Inc.

Carroll, Kelly, Trotter, Franzen & McKenna, David P. Pruett and Lori A. Conway for Defendants and Respondents Mark Lurie, M.D. and Michael Peter, M.D.

Reback, McAndrews & Kjar, James J. Kjar and Sean L. Cooper for Defendants and Respondents Howard Resin, M.D. and Edward Piken, M.D.

La Follette, Johnson, De Haas, Fesler & Ames, Louis H. De Haas and David J. Ozeran for Defendant and Respondent Lee Lindquist, M.D.

Fonda & Fraser and Peter M. Fonda for Defendants and Respondents Little Company of Mary Hospital and Torrance Memorial Medical Center.

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IN THE SUPREME COURT OF THE UNITED STATES

OLGA OSTOPOSIDES, et al.

v.

RICHARD GLIMP, M.D. et al.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

Olga Ostoposides et.al respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (*App., infra,* 1a) is reported at Olga Ostoposides, et al., Plaintiffs and Appellants

v.

Richard Glimp, M.D., et al., Defendants and Respondents

B161058

Court of Appeal of California Second Appellate District

Division Four

2006 Cal. App. unpub. Lexis 1687.

JURISDICTION

The court of appeals entered its judgment on March 15, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1).

STATUTORY & CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment of the U.S. Constitution, Section 1, regarding due process clause is printed at *App., infra,* 119a. Federal Statute 28 USCA Section 1915 is printed at *App, infra,* 120a.

STATEMENT OF THE CASE[1]

On November 20, 2000 the Petitioners filed a wrongful Death lawsuit. Though on November 27, 2000 we signed a retainer for Attorney Diane Goldman to represent us in this matter, unknown to us she never substituted into the case and sat on it for 5 months. On June 28, 2001 we signed a contingent fee agreement with Attorney Lynn Moyer to represent us, **and the day** she substituted into the trial **the trial court set the trial date** for Nov.13, 2001.Our then Attorney Lynn Moyer never intended to go to trial in this matter, but rather to force us into a settlement before trial, which was necessary for her to do to avoid having to advance the costs and expense of bringing the matter to trial, i.e. expert witness fees, depositions, records etc. Seeing there was no settlement offer, Attorney Lynn Moyer on the eve of trial Demanded that we come up with $20,000 in order for her to continue representing us, despite the fact that she had signed and taken the case on a contingency basis. When we assured her we could in no way do that, Attorney Lynn Moyer then filed an Ex Parte Motion to be relieved as our Attorney, leaving us abandoned. When she realized, according to the law, that the only way she could retrieve the money she had already spent, was to prove that she had to withdraw due to unethical reasons, she stooped to the level of falsely claiming that as a reason for her withdrawing. However; we clearly and overwhelmingly evidenced since then to the court that the only reason she made this false allegation, was because according to the law, it was the only way she could retrieve money.[2]

Despite this, the court allowed her to withdraw on the eve

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[1] See Petitioner's Appellate Opening Brief under **Appendix D**, pages 27a to 33a in this writ of certiorari for facts regarding the wrongful death of John Ostoposides.

[2] See Petitioner's Rehearing Brief under **Appendix E**, pages 92a through 97a in this writ of certiorari.

of trial and though they continued the trial date for four months, Every attorney we contacted assured us that because of the Voluminous size of the case and the fact that it was severely underdeveloped by our previous attorney and had Motion Summary Judgments approaching, a continuation of the trial date was needed in order for them to even consider taking the case. When we offered to present evidence to the trial court regarding the fact that Every attorney we spoke to said they could not take the case unless the trial date was changed, the Trial Court Refused to allow us to file our evidence and Refused to continue the trial date so that an attorney could step into represent us. Hence denying us of our Due Process Rights under the United Stated Constitution to a Fair Hearing which includes the Right to an Attorney, and the Judge as mentioned herein disposed of our case at the Motion Summary Judgment Hearings. Our Appeal well evidenced, not only these legal Atrocities mentioned, but also the overwhelming medical Atrocities that happened to our Father as well.[3] Despite this, the Appellate Judges opinion negated all of our evidence and willfully did not acknowledge any of the real facts regarding the Wrongful Death of our Father, but only published the respondents Volitional lies as truths.[4] Our Father went into the hospital for a broken toe and because the doctors chose not to believe John Ostoposides or his family, that they had him on his wrong dose of medicine, He came out Dead, due to all of the overwhelming complications that resulted, as a result of their continual negligence toward him.

Instead of accurately reporting these truths, the Appellate Judges Opinion regarding our Fathers medical condition is Blatantly False, and has been overwhelmingly evidenced to

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[3] See Petitioner's Appellate Opening Brief under **Appendix D** with this writ of certiorari.

[4] See Petitioner's Rehearing Brief under **Appendix E** with this writ of certiorari.

be so in a rehearing brief.[5] However, the Appellate Court refused to acknowledge or correct these truths. Causing severe Insult to the already Horrific Injury our family has had to endure regarding his wrongful death.

The final Blow came when in their Opinion they stated: "We know of no Authority which even suggests a plaintiff in a medical malpractice case is entitled to be represented by counsel." and backed their statement up with published Appellate Court opinions that state: "As a general rule, there is No Due Process Right to counsel in civil cases." Which all contradict this United States Supreme Court Ruling in Powell v. Alabama which states:

> "If in **Any** Case, **Civil** or **Criminal** a State or Federal Court were Arbitrarily to refuse to hear a party by counsel employed by and appearing for him it reasonably may not be doubted that such a refusal would be a **Denial of** a **Hearing** and therefore of **Due Process** in the **Constitutional Sense**."

Hundreds of thousands of Dollars, have been awarded in Costs by the trial court to these Doctors and Hospitals. Handsomely Financially Rewarding them for, Changing Medical Records, Lying Under Oath, Lying at Depositions and in All Their Motion Summary Judgments, etc, etc, etc. And now the Appellate Court has awarded them costs for this appeal, which has afforded them the opportunity to collect Hundreds of more thousands of dollars against us. All of this in the face of the fact that both courts knew we were **Indigent Involuntary Pro Per Litigants Proceeding in Forma Pauperis** and had the right to have **No Costs** Assessed against us according to Federal Statute 28 USCA §1915, U.S. Supreme Court Ruling in Adkins v. E.I. Dupont de Nemours & Co. and the CA State Supreme Court Ruling in Earls v. Superior Court, which Both state that **the Right of**

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[5] See Petitioners Rehearing Brief under **Appendix E** with this writ of certiorari.

Any Indigent to Proceed without Costs was applicable to All Cases in the State.

My elderly Mother would be forced to sell her house leaving her financially destitute in order to pay the costs of not only the Hundreds of Thousands of dollars awarded by the lower court, but the now potential of Hundreds of Thousands of More Dollars awarded to these respondents by the Appellate Court. Suffice to say, she will suffer irreparable harm along with her family, if a Summary Reversal and Remand is not granted to us by this court regarding the injustices that have been done to us in this matter..

It is for this reason that we have directed this petition to you Honorable Justices'. I Renna Ostoposides have spent the last 7 years of my life now seeking justice for the wrongful death of my Father. The Magnitude of the Atrocity that happened to him Demanded that I do so. The Devastating details are far too many to go into here. I am sure that when you took this office, your only purpose for doing so was so that you could serve Constitutional Justice to the American People. Pure and Simple. I purely and simply am seeking that Justice from you. I have exhausted all my options at this point, and now truly have no place else to go. This writ petition details the legitimate evidence that provides you with the opportunity to exercise your authority to instruct that a summary reversal and remand be granted to us, so that we can justly have our day in court and see true Justice brought to the wrongful death of our Father.

It is so crystal clear that under the Constitution we had a Due Process right to an Attorney and to a fair hearing, However, if we cannot get anyone to enforce that right for us, what good does it do us?

REASON FOR GRANTING THE PETITION

In studying the historical context of our Constitution, this violation of our Due Process right becomes even more

evident.

In the midst of the Constitutional Convention in Philadelphia, on June 28, 1787, two months into the convention, when Rancor and Division still Reined and it looked like the whole thing would collapse. Benjamin Franklin, in his 80's then, stood up and said: " In the beginning of the contest with Great Britani, when we were sensible of danger, we had daily prayer in this room for Divine Protection. Our prayers Sir, were heard, and they were gratiously answered ...And have we now forgotten that Powerful Friend ? Or do we imagine we no longer need His Assistance, I have lived long sir, and the longer I live the more convincing proofs that I see that God Rules in the affairs of men. And if a sparrow cannot fall without His notice, how much less can an empire raise without His aid. We've been assured in the Sacred Writings that "Except the Lord build the house, they labor in vain that build it." And he called for prayer every morning at that convention and astoundingly it was reported that the acrimony and dissensions evaporated from that moment on, and our United States Constitution was birthed.

By the time they finished, in England it was said, that the Greatest most Brilliant document ever struck by the mind of uninspired man was the Constitution of the United States.

Newsweek magazine in an article entitled "How the Bible Made America" said, "New historians are discovering that the Bible, perhaps even more then the Constitution is the Founding Document of our Country."

The writings of the Founding Fathers and their speeches in the conventions and their writings for that whole founding era have all been examined and they found that more then any other source, the most quoted source by these men was the Bible. These men took the principles of this word and incorporated them into the Greatest Constitution that the world has ever seen.

Our Constitution's Biblical bases is not by chance, it was designed by men who studied the rise and fall of nations and knew the lessons of history and knew the Sacred Scriptures.

When historians did a close textual analysis of The U. S. Constitution to understand the text, it took them back to the early state constitutions. When they looked for the origins of those early state constitutions it lead them back to documents of the colonial era, back further and further and further until finally they came to these documents they recognized as covenants. They suddenly realized that the U.S. Constitution goes back to **covenants.**

In the Bible all Gods dealings with men take place through **covenant.** A solemn agreement between God and man. All of these people of the colonial era understood covenants and they understood compacts. They brought with them to America the technology of covenant, the ability to create communities . It was the perfect technology. It was the technology that mattered. It allowed them to survive, the ability to use covenant to create communities. The historian's then point out that the Constitution which is the nuts and bolts of how our government should work is predicated on the Declaration of Independence, which states the why of our government. The Declaration calls upon God as a witness as a **covenant.** Everyone understood what we were doing with that two part document because at that time everyone understood the covenant theology.

The Pilgrims began the process of American constitutionalism when they wrote the Mayflower Compact. When they called upon God as a witness as they made and signed a written agreement for self-government. This was the first of nearly a hundred such documents before the Constitution was framed in Philadelphia 167 years later.

The Pilgrims were a congregation of "Separatists", they were devout Calvinists who formed a congregation in secret, since it was highly illegal at that time to be separate from the

church of England. The Pilgrims based everything they did upon the Bible, even their name was derived from a Bible passage in the Geneva Bible, their favorite version. It came from 1 Peter 2:11, "Dearly Beloved I Beseech you as strangers and **Pilgrims** to abstain from fleshly lusts, which war against the Soul."

The Pilgrims believed that the church of England was so far beyond New Testament Christianity that it was hopeless to try and reform it. When a portion of their congregation finally came over on the Mayflower in 1620, they got blown off course and could go no further south then Cape Cod. Seeing that they were on their own, the Pilgrims did something unique in world history. They created their own charter for self government, they wrote up the Mayflower Compact, which was a Political statement of the spiritual covenant they had created years before, when they first became a congregation, the compact stated why they came.

> "In the name of **God** amen. We, whose names are underwritten...having undertaken for the Glory of God, and Advancement of the Christian Faith and the honor of our King and country, a voyage to plant the first Colony in the northern parts of Virginia to by these Presents Solemnly and mutually in the Presence of God and One of another, **Covenant** and Combine ourselves, together into a Civil Body Politick..." Mayflower Compact 1620).

They set up the Mayflower Compact, which was the First Covenant Compact theory of government ever written down and lived out in a free society in the history of mankind. The majority of the early English settlers were Bible believing Christians, dedicated to the Glory of Jesus Christ. They came to America to worship God in the purity of the Gospel, each in his own manner and after the Pilgrims gained a foothold here, many other Christian also came, such as the Puritans, who formed the rest of New England. John

Winthrop their leader, in the midst of a harsh winter, that claimed the lives of many wrote a touching letter to his wife back in England it stated: "We here enjoy God and Jesus Christ and is not this enough."

The writings of the builders of this nation in their own words state in the New England Confederation in 1643 "We all came into these parts of America with one and the same end and aim, namely to advance The Kingdom of Our Lord Jesus Christ."

The "Treaty of Paris" dated 1783, the treaty that officially ended the war between the New United States and England indicates this High view of Christ's Divinity among the founders. It is signed by John Adams, Benjamin Franklin and John Jay. The treaty begins "In the name of the most Holy and Undivided Trinity, Amen." In other words, in the name of the Father, Son and Holy Spirit, now lets talk about you guys giving up! So it opens with a very overt Trinitarian Christian Declaration right up front.

One of the most significant forerunners of the Constitution, was the "Fundamental orders of Connecticut." Thomas Hooker was one of the great Puritan ministers in early Connecticut. "The Fundamental orders of Connecticut." was written in 1639 and based on a sermon by Thomas Hooker. It was the first complete Constitution written on American Soil, it declares: "..We...enter into combination and confederation together to maintain and preserbe the Liberty and purity of the Gospel of our Lord Jesus, which we now profess...."

President George Washington ordered that copied in Philadelphia in 1787 so that every delegate would have a copy of Connecticut's State Constitution, because it was so powerfully done, so rooted in Holy Scripture in the word of God, it was such an effectual document that Washington wanted that to be a reference work for the Federal Constitution work they were about to get into.

If you look at America, we're the largest on going constitutional republic in the history of the world. We've been over two centuries under the same piece of paper. Nobody's done that, we've broken world records.

The very first session of Continental Congress was September 7, 1774. These men came together and they started with a prayer that we're told lasted about three hours. Not only a prayer, these men studied the Bible. They had a Bible study and a prayer to start off congress that was so influential on the Founding Fathers that John Adams writes home to his wife Abigail and tells her that God had spoken to them out of Psalm 35 in such a way they believed for the first time they could defeat the British. Psalm 35 reads: "Plead my cause, o Lord, with them that strive with me: Fight against them that fight against me. Take hold of shield and buckler, and stand up for mine help." John Adams wrote: "I never saw a greater effect upon an audience. It seemed as if heaven had ordained that Psalm to be read on that morning..." and when they read it they said God knows what's happening in America, God knows what's happening with our independence. And from that point on you will see them appeal to God and throw their cause before God as a just cause.

Out of this Continental Congress eventually grew our nations Birth Certificate, "The Declaration of Independence" which ultimately lead to the Constitution.

In 1776, fifty-six men representing less then three million people signed one of the most important documents in history. "The Declaration of Independence." of the fifty-six gentlemen who signed the Declaration, twenty four of those gentleman held seminary degrees and of those twenty four we had active ministers among them. Many of the founders had been influenced by the "Great Awakening", a Christian revival that swept the countryside a generation before. If the fledgling Colonies succeeded in defending themselves from

the most powerful nation on earth, it was worth the gamble. If they failed, they were signing their death warrant's. The level of the signers commitment and their willingness to sacrifice in order to secure liberty under law is evident in the final words of their declaration.

"...And for the support of this Declaration with a Firm Reliance on the Protection of "Divine Providence", we mutually Pledge to each other, Our lives, Our fortunes, and Our sacred Honor."

Everyone of the fifty-six men that signed "The Declaration of Independence" followed through on the commitment. When they did have to watch their homes be burned or they had to watch their sons die in the Revolutionary War. Indeed they had to give their whole life for the freedom that they birthed for us. Through the whole ordeal many of the signers paid a high price and all of them were willing to pay a high price so that these United States could be One Nation Under God.

Do you think that the Founders of this country sacrificed so much, and laid it all on the line, so that we could then squander the freedom they won for us ? John Quincy Adams once remarked speaking directly to us.

"Posterity you will never know how much it cost the present generation to preserve your freedom. I hope you will make good use of it, if you do not, I shall repent it in heaven that I ever took half the pain to preserve it."

What a statement. One that we have not heeded. But how can we expect our nation to preserve our freedom, when we have forgotten the source of it? We can't.

The Framers of the Constitution believed in the Biblical view of the sinfulness of human nature because of mans fallen condition. They believed that proper government required checks and balances against the tyrannical exercise of power. "The Heart is deceitful above all things, and desperately wicked; who can know it ?" Jeremiah 17:9.

James Madison, considered the Father of the Constitution was greatly influenced by the Bible in this area. He writes: "All men having power ought to be **distrusted** ." (James Madison, July 11, 1787) . The Constitution is based on a biblical premise that man is a fallen creature and he needs checks and balances.

George Washington, in his own handwriting said: "The Blessed Religion revealed in the word of God will remain an eternal monument about human depravity that is capable of corrupting the best of human institutions and therefore this Constitution that We've created could be ultimately just a wall of words or a mound of parchment if Human Sinfulness decides to throw it over."

It is this very Human Sinfulness that Our Beloved first President George Washington spoke of here that has manifested in our case and thrown over our Constitutional Rights as penned for us by him and all the Founding Fathers. Hence, if the violation of our Due Process Rights are not Acknowledged, the Constitution will have become for us, A Meaningless Wall Of Words On a Mound of Parchment.

How did we get here? How does a nation go from the clear Declaration in the United States Constitution that Every man has the right to a fair hearing, which includes the right to an attorney, so that he does not lose the justice of his cause, which is the very cloth from which the statement, "With Liberty and Justice For All" in our nations Pledge of Allegiance is cut from, To: "We know of no authority which even suggests that a Plaintiff in a medical malpractice case is entitled to be represented by counsel." The answer to how our Due Process Freedoms as declared for us in the United States Constitution went from giving us liberty and justice for all, to liberty and justice to a chosen few, can be likened to how the First Amendment went from <u>Guaranteeing</u> this nation its religious freedoms, to now subverting those very freedoms to which it <u>Guarantees</u>.

Just like our rulings by the lower courts have turned our Due Process Constitutional rights into a meaningless wall of words on a mound of parchment, so the modern day ruling by the court regarding the First Amendment has turned our Founding Fathers original intent of the First Amendment of the Constitution into a meaningless wall of words on a mound of parchment.

The First Amendment never intended to separate Christian principals from the government. Yet today we so often hear the First Amendment coupled with the phrase "Separation of Church and State."

John Quincy Adams stressed that the biggest victory won in the American Revolution was that Christian Principals and Civil Government would be tied together in what he called and indissoluble bond. In his July 4th, 1837 speech he stated: "Why is it that next to the birth-day of the Savior of the world, your most joyous and venerated festival returns on this day? Is it not that, in the chain of human events the birth-day of the nation is indissolubly linked with the birth-day of the Savior? That it forms a leading event in the progress of the Gospel dispensation ? Is it not that the Declaration of Independence first organized the social compact on the foundation of the Redeemer's mission upon earth ? That it laid the cornerstone of human government upon the first precepts of Christianity."

But today we hear just the opposite, today we're told that the Founders wanted separation. That's not what he said. Other significant Founders were just as clear and outspoken about their belief that our government was developed on the precepts of Christianity. For example, George Washington was the President of the United States who called for the First Amendment and was the man who oversaw its formation. Certainly he knew its intent. He states in his farewell address: "Of all the dispositions and habits which lead to political prosperity, Religion and Morality are

Indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars." Washington clearly believed that if an individual attempted to separate Religion and Morality from politics that he could not be called an American Patriot.

This Biblical heritage was so well understood during the early years of the nation and the writings of the numerous Founding Fathers were so well known, that in later years the Supreme Court ruled in the Founders intentions, keeping Biblical principals as the basis for their rulings. However, today's rulings by the court often Repudiate rulings delivered by our Founding Fathers. For example, in 1811 the court made a ruling, which was subsequently cited by the U.S. Supreme Court where that court declared in People v. Ruggles (1811) "Whatever Strikes at the root of Christianity tends manifestly to the dissolution of civil government." Although this case dealt with a man who went into a profanity fit, profanity wasn't the problem, it was the intent of his profanity. For it had not been a moment of anger or temporary lose of control, but it was a deliberate and planned act. He'd even taken the time to write it out and distribute it. In that writing he had maliciously and capriciously attacked Jesus Christ through a string of accusations and profanities against Jesus Christ and the word of God. The court explained that the problem with his writings was that an attack on Jesus Christ was an attack on Christianity, an attack on Christianity was an attack on the foundation of the Country, therefore an attack on Jesus Christ was an equivalent to an attack on the Country. This man was sentenced to three months in prison and a $500.00 fine for attacking the Country by attacking Jesus Christ. And notice the date of that case, 1811, <u>nearly two decades after the First Amendment was in place.</u>

The First Amendment <u>never</u> intended to separate Christian principles from the government. Yet today we so

often hear the First Amendment coupled with the phrase "Separation of Church and State." Obviously the word separation, church or state are not found in the First Amendment. Furthermore, that phrase appears in NO Founding Document. The history and origins of the process of drafting the First Amendment made the intent of the Founders Abundantly Clear, for before they approved the final wording, the First Amendment went through nearly a dozen different interactions and extensive discussions. Those discussions, recorded in the U.S. Congressional Records from June 7th -September 25, 1789 made clear their intent for the First Amendment. By it the Founders were saying, we do not want in America what we had in Great Britain. We don't want one denomination running the nation. We will not allow all to be Catholics or Anglicans or any other single denomination. We do want God's principles, but we don't want one denomination running the nation. This intent was well understood as evidenced by court rulings After the First Amendment. For example, in 1799 the Runkel v. Winemiller case declared: "**By our form of government, the Christian Religion is the established Religion:** and all sects and Denominations of Christians are placed on the same equal footing."

Thomas Jefferson, to whom the now popular phrase "Separation of Church and State" is attributed, also believed, as did the other Founders, that the First Amendment simply prevented the federal establishment of a single Denomination. A fact he made clear in his September 23, 1803 letter to Benjamin Rush. In that letter Jefferson committed himself as President to not allowing the Episcopalian, the Congregationalist, or any other Denomination to achieve what Jefferson called the establishment of a particular form of Christianity. On November 7, 1801 the Baptist of Danbury Connecticut wrote Jefferson concerned that the guarantee of the free exercise of

religion appeared in the First Amendment. To them this suggested that the right to Religious exercise was a government granted, rather then a God granted right, thus implying that someday the government might try to regulate religious expression. They believed that freedom of religion was a God-granted, unalienable right, and that the government should be powerless to restrict religious activities unless those activities caused someone to "work ill to his neighbor." Jefferson understood their concern in his response on January 1, 1802 he assured them that the free exercise of religion was indeed an unalienable right and would not be meddled with by the government. Jefferson pointed out to them that there was a wall of separation between church and state to insure that the Government would Never Interfere with religious activities.

Today all that is heard of Jefferson's letter is "A wall of separation between church and state" without either the context or the explanation given in the letter or its application by earlier courts. The Clear understanding of the First Amendment for a century and a half was that it prohibited establishing a single national denomination. National policies and rulings in that century and a half always reflected that interpretation. For example, in 1853 a group petitioned congress to separate Christian principles from government. They desired a so-called separation of church and state with Chaplains being turned out of congress and out of the military etc. Their petition was referred to the House and the Senate Judiciary Committees, which investigated for almost a year to see if it would be possible to separate Christian principles from government. Both the House and the Senate Judiciary committee returned with the reports March 27, 1854. The following are excerpts from the House report delivered on March 27, 1854; the Senate report was very similar. The House Report said "Had the people (The Founding Fathers) during the Revolution had Any Suspicion

of Any attempt to war against Christianity, **That Revolution Would Have Been Strangled In Its Cradle...** at the time of the adoption of the Constitution and its amendments, the universal sentiment was that Christianity should be encouraged, but not any on sect (Denomination)." The report continued: "In this age there is no substitute for Christianity...that was the religion of the Founders of the Republic and they expected it to remain the religion of their descendants." Two months latter the House-Judiciary Committee made this strong statement. "**The Great Vital and Conservative element in our system (The thing that holds our system together) is the belief of our people in the pure doctrines and the divine truths of the Gospel of Jesus Christ.**" The Committee explained that they would Not separate these principles, for it was these principles and activities, which had made it so successful. They'd been our Foundations our basis.

Thereafter, the U.S. Supreme Court utilized Jefferson's letter to **Insure** that Christian Principals remained a part of Government. In 1947 Jefferson's letter fell into disuse in the Everson v. Board of Education case. The court for the first time did not cite Jefferson's entire letter, but selected only 8 words from it. The court now announced. "The First Amendment has erected "a wall of separation between church and state.' That wall must be kept high and impregnable." This is a statement lacking historic and legal precedent. The court failed to quote the Founders and just Generically stated: "This is what the Founders wanted." This statement precisely describes a tactic utilized by the court in years following its 1947 announcement. The Supreme Court after 1947 began regularly to speak of "A Separation of church and state." Broadly explaining that "This is what the Founders wanted, separation of church and state, this is their great intent."

When the court declares something unconstitutional, it is

inferring that our Founding Fathers, the men drafting the Constitution would have opposed it. Yet notice what James Wilson had to say about this. James Wilson was a Signer of the Constitution, an original Justice on the United States Supreme Court and Co-author of Americas First Commentaries on the Constitution. Certainly he's qualified to speak on the intent of the Constitution. "Human Law must rest its authority ultimately upon the authority of that law which is Divine...Far from being rivals or enemies religion and law are twin sisters. Indeed, these two Sciences run into each other. The Divine law...Forms an essential part of both."

Our Founders were **Clear** about the importance and Inseparable role that Religious principals played in the public life in the nation. There are numbers of court cases readily available which show that until 1962-63 the courts consistently ruled using Biblical principals and following Biblical guidelines.

In our own time the wall of separation has been accepted by many Americans as an Authoritative expression of the First Amendment. Its language that's been adopted by courts as a rule of Constitutional law, Supplanting the actual text of the First Amendment.

A Nation that is ignorant of its past is a nation that is ripe for deception and manipulation. Therefore, it is not what happened, but rather what people believe happened which determines the present actions of a nation. The First Amendment imposes its restriction on one entity and that entity of course is "Congress." Remember it says "Congress shall make no law" but if you replace the First Amendment with this "Wall of Separation" you begin to transform the First Amendment, it goes from being as the text tells us in a very literal sense from being a restriction on government only, to now being a Bilateral barrier, which not only restricts what's on one side of the wall, this congress, but it now also

restricts whose been placed on the other side of the wall, the Church, the faith based community, citizens of faith and this transforms what the First Amendment is all about.

This wall now becomes an instrument to restrict Religions ability to influence public life and in this way it exceeds, exceeds dangerously the mandate imposed by the First Amendment.

So let's not kid ourselves, the wall of separation is used to restrict the Church, to silence the Church and to limit its reach into public life. The wall is used to separate Religion from public life thereby promoting a Religion that is essentially private and a state that is strictly secular.

This would have been Alarming to the Founding Fathers, because as John Adams stated: "We have no government armed with power capable of contending with human passions unbridled by morality and religion. **Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."**

Today the wall is a scared icon of a strict separationist dogma, intolerant to religious influences in the public arena. Federal and State courts have used the wall of separation concept to justify censoring private religious expressions such as, Christmas in any public forum, they've used this metaphor to strip public spaces of religious symbols, to deny public benefits such as education vouchers for religious entities and to exclude religious citizens and organizations from full participation in civic life on the same terms as they're secular counterparts.

The systematic removal of religion from public life not only is at war with our cultural traditions in so far as it vents a hostility and an indifference towards religion, but it also offends basic notions of freedom of religious exercise, religious expression and association in our society.

The high and impregnable wall constructed by the

modern Supreme Court inhibits Religions ability to inform the public ethic. It deprives religious citizens of the civil liberty to participate in politics armed with ideas informed by their spiritual values and it infringes on the right of religious communities and institutions to extend their prophetic ministries into the public square.

Jefferson's misapplied, misunderstood metaphor has been used to silence the religious voice in the market place of ideas, and to segregate faith communities behind a restrictive barrier.

Now that reminds me a lot as to how the american civil liberties uses this language today. They use it to silence the Church and the Clergymen who speak out in public life.

What would Thomas Jefferson had said to all of this? I'll let him speak for himself. "And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with His wrath? Indeed I tremble for my country when I reflect that God is just: that His justice cannot sleep forever."

There is a certain Irony that the court in the 20th Century has looked to Thomas Jefferson's phrase as the organizing theme of its jurist prudence, because at the time that the First Amendment was debated in the first congress at the time that it was Ratified, Jefferson was not even in the United States and he was not directly involved in the debate over the language we find in the First Amendment. Indeed he was the American Minister to France, so he was somewhat removed from that particular debate.

Jefferson even end's his famous letter to the Danbury Baptists with a prayer. And so there's a certain irony that the phrase he's so famous for "A Wall of Separation." which is used today to restrict the role of religion in public life, we find right next to it in his own letter, Jefferson offering a prayer.

Historians have revealed that Jefferson was a regular attendant of church service in the House of Representatives during his two terms. He was met on the way to church and somebody asked him where he was going. He said "I'm going to Church" and his acquaintance said " Well, come on, you don't believe in that stuff" and Jefferson sort of Huffed and Puffed and said "Sir, no government can flourish without religion, and I'm going to give religion the sanction of my attending church service."

Right after the drafting of the First Amendment to the Constitution, it was George Washington who's called upon to pronounce a day of prayer and thanksgiving, giving thanks to God for giving them the opportunity to peacefully assemble so that they could draft this Constitution. I doubt that they would do that if the purpose of the amendment was to get rid of God from government.

James Madison introduced the First Amendment. When James Madison later was the forth President he had a terrorist attack against our country when the British burnt the White House. James Madison declared a day of prayer to almighty God, he declared another day of prayer to almighty God, then he declared a day of fasting and prayer to almighty God. Certainly James Madison didn't think that the First Amendment he introduced was suppose to keep God out.

Virtually all the Founders were agreed that Religion played a vital role in promoting social order, civil virtue and political prosperity. Furthermore, though the First Amendment prohibited a national church, several of the individual states had established state churches which continued after the Constitution was Ratified, in the case of Massachusetts, for another 44 years.

There were established churches at the state level and part of the purpose of the First Amendment was to prohibit the national government, the federal government from interfering with the existing religious establishment at the

state level.

Far from sweeping religion out of public life, historical studies show that the intent of the First Amendment was to maintain the freedom to worship God according to conscious rather then coercion or Restraint.

If the Founding Fathers have successfully argued to you through their writings that the wall is a profoundly flawed doctrine for the First Amendment. Then I along with all the Founding Fathers of this nation do humbly beseech you to:

Tear -Down-This-Wall !!!

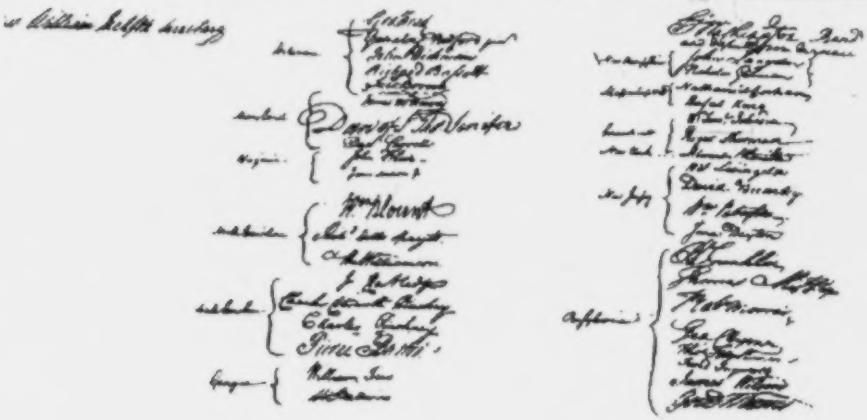
In the same way that the First Amendment has been subverted, our Due Process right to an attorney was subverted by the lower courts. If this United States Supreme Court does not step into see that these rights are restored to us, then the Constitution will have become for us a meaningless wall of words on a mound of parchment.

Please don't let that happen to us and Please don't let it happen to our Father John Ostoposides who fought in World War II in order to preserve that very wall of words on that mound of parchment called the United States Constitution. He was willing to give his very life so that he and his family and his fellow countryman could partake of the rights that it proclaims for us. Because suffice to say, not acknowledging his families Due Process rights in the Constitution and the violations of those rights as recorded herein, would be the equivalent of telling him, that his mighty valor of fighting for his country to preserve those very rights, was all in vain.

Having read the words of my Founding Fathers it is with the utmost confidence that I can hear them say "Add my Signature of support to your petition, for it embraces the very principles for which this Republic was Birthed."

Lord you have heard the desire of the humble…You will cause Your ear to hear, to do justice to the Fatherless and the oppressed, that the man of the earth may oppress no more. Psalm 10: 17-18

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. In Witness whereof We have hereunto subscribed our Names.



CONCLUSION

For all of the reasons stated above, this petition for a writ of certiorari should be granted.

Respectfully submitted, August 30, 2006

Olga Ostoposides Petitioner in Pro Se

Renna Ostoposides Petitioner in Pro Se

Harry Ostoposides Petitioner in Pro Se

Socrates Ostoposides Petitioner in Pro Se

APPENDIX A

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

[Filed February 27, 2006]

OLGA OSTOPOSIDES et al., Plaintiffs and Appellants, v. RICHARD GLIMP, M.D., et al., Defendants and Respondents.	B161058 (Los Angeles County Super. Ct. No. YC039166

APPEAL from a judgment of the Superior Court of Los Angeles County. Ramona G. See, Judge. Affirmed.

Olga Ostoposides, Renna Ostoposides, Harry Ostoposides, and Socrates Ostoposides, in pro. Per., for Plaintiffs and Appellants.

Schmid & Voiles and Suzanne De Rosa for Defendants and

Respondents Richard Glimp, M.D., Benjamin Rosin, M.D., James Ding, M.D., R. Michael Wyman, M.D., Robert Grossman, M.D., Jerome Unatin, M.D., Bruce Jackson, M.D., Thomas Lawrence, M.D., ID Med, COR Healthcare Medical Associates, Gary Kissell, M.D., and Michael Nakata, M.D.

Bonne, Bridges, Mueller, O'Keefe & Nichols, Carmen Vigil and Sabrina D. Corsa for Defendants and Respondents Frank An, M.D., Marina Raikhel, M.D., and Torrance Family Practice Medical Group, Inc.

Carroll, Kelly, Trotter, Franzen & McKenna, David P. Pruett and Lori A. Conway for Defendants and Respondents Mark Lurie, M.D. and Michael Peter, M.D.

Reback, McAndrews & Kjar, James J. Kjar and Sean L. Cooper for Defendants and Respondents Howard Resin, M.D. and Edward Piken, M.D.

La Follette, Johnson, De Haas, Fesler & Ames, Louis H. De Haas and David J. Ozeran for Defendant and Respondent Lee Lindquist, M.D.

Fonda & Fraser and Peter M. Fonda for Defendants and Respondents Little Company of Mary Hospital and Torrance Memorial Medical Center.

INTRODUCTION

This is an appeal from the grants of summary judgment in favor of numerous doctors, two medical groups, and two hospitals in a wrongful death action arising from alleged medical malpractice. The appellants, Olga, Renna, Harry, and Socrates Ostoposides, appearing in propria persona, alleged that respondents negligently treated and cared for the decedent, John Ostoposides. The trial court issued multiple stays of the proceedings and continuances of the summary judgment motion hearings in order to give appellants an opportunity to retain counsel. Eventually the court granted the summary judgment motions, finding that there was no breach of duty and/or no causation, as a matter of law. We affirm.

BACKGROUND

v The Underlying Medical Treatment of Decedent

Decedent had a history of severe coronary disease including congestive heart failure, failed coronary artery angioplasty and by-pass surgery, as well as hypertension, and possible diabetes. He broke his foot in March 1999.

On June 8, 1999, decedent arrived in the Torrance Memorial Medical Center emergency room. He was admitted with a swollen, tender foot. Multiple doctors saw decedent during this hospitalization. He was treated for osteomyelitis, a bone infection. During the next three weeks of hospitalization, decedent refused to wear special hosiery or keep his legs elevated to combat edema and refused to keep track of his urine and fecal output levels. On July 19, 1999, the edema had resolved, but he appeared disoriented and confused. It was believed that he had azotemia (excess urea and other waste in the blood), and confusion secondary to low potassium., age, and cerebral atrophy. Decedent began refusing to eat on July 21, 1999.

Upon his family's request, decedent was transferred to Little Company of Mary Hospital on July 26, 1999. Decedent was examined and placed on a plan of cautious hydration. On August 1, 1999, he was agitated and refused all medications and meals. For the next two days, he refused medical treatment. Decedent's family requested that he be discharged, against medical advice on August 3, 1999. He was discharged on the following day.

Four days later, decedent was readmitted to Little Company of Mary Hospital with generalized weakness, diffuse abdominal pain, and a recent history of passing blood through his rectum. He was diagnosed with gastrointestinal bleeding, renal insufficiency, and an enlarged heart. An emergency endoscopy revealed a massive ulceration on the intestinal wall. Decedent then underwent surgery to remove part of his stomach due to two ulcers.

Decedent expired on August 20, 1999. According to the death certificate, he died of cardiorespiratory arrest due to a heart attack and longstanding coronary artery disease.

v **Procedural History**

On November 20, 2000, appellants filed a complaint for wrongful death, professional negligence, medical malpractice, and loss 'of consortium arising from respondents' treatment of decedent John Ostoposides.

The respondents filed separate motions for summary judgment. Most of them argued there was no breach of duty because he, she, or it had complied with the applicable standard of care when treating decedent; some respondents contended there was no causation. Others argued that appellant Olga Ostoposides lacked standing because she was no longer married to decedent when he died.

Appellants originally appeared in propria persona. They were represented by counsel Lynn Moyer for approximately three months in 2001. Counsel filed an ex parte application to withdraw as appellants' attorney. On September 24, 2001, the trial court granted the application, issued a 30-day stay, continued the hearing date for respondents' motions for summary judgment, and continued the trial date for four months.

On October 31, 2001, the trial court granted appellant's request for a stay of the proceedings, and issued another 30-day stay. But the court rejected appellant's request to continue the trial date.

The court granted appellants' subsequent request to stay discovery until January 1, 2002.

On January 22, 2002. the court denied appellants' additional request to stay the proceedings and continue the trial date.

Appellants filed joint oppositions to the motions for summary judgment on January 28 and January 29, 2002. Instead of addressing the substantive issues raised in the motions for summary judgment filed by respondents (except Lurie's motion), appellants requested a continuance. They contended their claims were meritorious, but they had not been able to retain counsel to assist them.

On January 31, 2002, the trial court stayed the action pending

appellants' appeal of the order permitting Moyer to withdraw as counsel and the most recent order denying their request to stay the proceeding and continue the trial date. The appeal was dismissed on February 20, 2002. Appellants filed a writ petition challenging the order permitting Moyer to withdraw; it was summarily denied. The court then stayed the matter for one week after appellants filed a petition for review in the California Supreme Court; review was denied. The court subsequently continued the hearing of the summary judgment motions until April 18, 2002.

The trial court did not expressly rule on appellants' request for a continuance during the hearing, but it granted the motions for summary judgment filed by Torrance Family Practice Medical Group, James Ding, Michael Nakata, Benjamin Rosin, R. Michael Wyman, Lee Lindquist, Jerome Unatin, Frank An, Marina Raikhel, Robert Grossman, Richard Glimp, Howard Resin, Michael. Peter, Torrance Memorial Medical Center, Little Company of Mary Hospital, ID MED, and COR Healthcare Medical Associates, on the grounds that their respective care, treatment, and/or advice did not fall below the standard of care, and that appellants filed no opposition addressing the substantive issue of the motions, no separate statement of disputed facts, and no supporting evidence.

The court also granted the summary judgment motions filed by Bruce Jackson, Gary Kissell, Thomas Lawrence, and Edward Piken, on the grounds that they never provided any care or treatment to decedent, and appellants filed no opposition addressing the substantive issues of the motion, separate statement of disputed facts, or supporting evidence.

The court granted Mark Lurie's motion for summary judgment on the grounds that appellants failed to present any specific facts demonstrating any triable issues concerning Lurie's care and treatment of decedent.

DISCUSSION

1. Application to Withdraw as Counsel

Appellants contend the trial court abused its discretion when it granted attorney Lynn Moyer's application to be relieved as

appellants' counsel.

v **Background**

On June 28, 2001, appellants retained Moyer. She propounded and responded to discovery, met with experts, attended and took depositions, served a new Doe amendment, and dismissed 15 defendants. On September 17, 2001, Moyer filed a motion to be relieved as counsel, declaring that she and Renna Ostoposides did "not see eye to eye on many matters," and that Renna continually refused to take her recommendations and advice, making her counsel ineffective. Moyer further declared that, after a disagreement over how to proceed with the case, Renna told her she was fired; Renna later said that Moyer had fired herself.

Appellants opposed the motion, arguing that Moyer's withdrawal would prejudice them, and the conflict between appellants and Moyer had been resolved. Appellants alternatively requested a continuance of the trial date, an extension of the discovery cut-off date, and the suspension of discovery to give them sufficient time to retain new counsel. In a declaration submitted in support of the opposition, Renna admitted that Moyer undertook to perform numerous services for appellants. Renna also declared that Moyer felt "pressured by the time constraints" of the "early trial date." In her declaration, Renna did not dispute Moyer's statements regarding their relationship.

Moyer filed a reply stating she could not ethically continue representing appellants and offering to discuss the details of her reasons for withdrawing during an in camera proceeding.

On September 24, 2001, the trial court granted Moyer's application; it also issued a 30-day stay of proceedings, continued the hearing date for respondents' motions for summary judgment from October 9, 2001 to February 11, 2002, and continued the trial date from November 13, 2001 to March 14, 2002.

v **Discussion**

"A lawyer violates his or her ethical mandate by abandoning a client (*Pineda v. State Bar* (1989) 49 Cal.3d 753, 758-759), or by withdrawing at a critical point and thereby prejudicing the client's

case. (Rules Prof. Conduct, rule 3-700(A)(2); *Vann v. Shilleh* (1975) 54 Cal.App.3d 192, 197)." (*Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904, 915.) But an attorney may withdraw from a case when it can be accomplished without undue prejudice to the client's interests. (*Ibid.*)

Code of Civil Procedure section 284 provides an attorney may withdraw from employment "[u]pon the order of the court, upon the application of either client or attorney, after notice from one to the other."

The California Rules of Professional Conduct specifically permit an attorney to withdraw where the attorney "has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D) [mandating the release of client papers and property and the refunding of unearned fees], and complying with applicable laws and rules." (Rules Prof. Conduct, rule 3-700(A)(2).) The rules further provide that withdrawal is mandatory if the attorney "knows or should know that continued employment will result in violation of these rules or of the State Bar Act." (Rule 3-700(B)(2).) Permissive withdrawal is allowed where the client makes it "unreasonably difficult for the member to carry out the employment effectively." (Rule 3-700(C)(1)(d).)

"The case law establishes that the court has discretion to deny an attorney's request to withdraw where such withdrawal would work an injustice or cause undue delay in the proceeding. [Citations.] But the court's discretion in this area, as elsewhere in the law, is one to be exercised reasonably." (*Mandell v. Superior Court* (1977) 67 Cal.App.3d 1, 4.)

Contrary to appellants' contention, Moyer did not "abandon" them. She propounded and responded to discovery, met with experts, and took and defended depositions before Renna fired her.

Moyer did not seek to withdraw at a critical point thereby prejudicing appellants' case. Unlike *Vann v. Shilleh, supra,* 54 Cal.App.3d 192, where counsel withdrew on Friday when the trial

was set to begin on the following Monday, Moyer filed an ex parte application to withdraw nearly two months before the trial date. After the trial court granted Moyer's application, it continued the trial date for approximately another four months. Thus, the case was not scheduled to go to trial until nearly six months after the court granted Moyer's application to withdraw. The court also continued the hearings for the motions for summary judgment and the discovery cut-off date, and imposed the first of three 30-day stays of the proceedings. Moyer's declaration in support of her application includes specific examples of her strained relationship with Renna. They support her claim that she could not work effectively as appellants' counsel. Renna argued that they had resolved their conflicts, but she did not present any evidence of this in her opposition papers. Under these circumstances, we conclude the trial court properly granted Moyer's application to withdraw as appellants' counsel.

2. The Request to Continue the Summary Judgment Motions

Appellants contend the trial court erred when it denied their request to continue the summary judgment motions and that the court's ruling deprived them of their due process right to a fair hearing.

v **Background**

Appellants filed two joint oppositions to the respondents' motions for summary judgment. They argued that under Code of Civil Procedure section 437c, subdivision (h), where facts essential to support the opposition exist but cannot be presented, the court should deny the motions or order a continuance to allow the additional evidence to be submitted.

Renna declared in support of the opposition that appellants diligently searched for an attorney. Every attorney they consulted with considered the case to be "extremely meritorious," but due to the "imminent trial date" and the number of summary judgment motions already on calendar requiring opposition, and their own trial schedules, it was "virtually impossible for any of them to even consider taking the case."

Attorney Russell Behjatnia declared that appellants contacted him to consider becoming their counsel, and he agreed to review the pleadings and other documents in order to make an informed decision on whether to accept this matter. He further declared that he was informed and believed that certain procedural deadlines were approaching in the immediate future which needed to be continued.

Attorney John Eberlein declared that Renna asked him to represent appellants. He further declared that he had reviewed some of the facts and was still in the process of conducting this review. As of January 18, 2002, he had not and could not determine whether he would agree to represent appellants. He also declared that with a trial date so close, and numerous items of discovery and oppositions to motions for summary judgment due, he could not accept the case. Finally, he stated that he believed the case was "very complex," and the appellants' new counsel would "need several months to prepare."

v **Due Process**

Appellants contend they had a right to a fair hearing and this encompassed the right to be represented by counsel. They further contend they should be represented by an attorney as a matter of right, although this is not a criminal case.

We know of no authority which even suggests a plaintiff in a medical malpractice case is entitled to be represented by counsel, and no such case has been cited by appellants. But even if we assume the constitutional provisions are applicable to a civil case, there was no due process violation here. (See *People v. $30,000 United States Currency* (1995) 35 Cal.App.4th 936, 942, *Iraheta v. Superior Court* (1999) 70 Cal.App.4th 1500, 1503; *Fallis v. Dept. of Motor Vehicles* (1968) 264 Cal.App.2d 373, 383 ["In its narrowest definition, [the right to be represented by counsel] is the right to appear by counsel in any adversary proceeding in which the adversary party has the benefit of or the right to counsel"]; *Mendoza v. Small Claims Court* (1958) 49 Cal.2d 668, 673; cf *Vann v. Shilleh, supra,* 54 Cal.App.3d at p. 200.)

Here, the record discloses no due process violation. Appellants were not deprived of their rights to a fair hearing. As explained above, appellants' contention that attorney Moyer was permitted to withdraw "on the eve of trial," is misplaced.

Contrary to appellants' argument, they failed to present evidence demonstrating that "no attorney could take the case because of the pending trial date." (Italics added.) The declaration of Renna Ostoposides and attorney Russell Behjatnia are unhelpful. Only one attorney, John Eberlein, declared on January 18, 2002, that he could not take the case in part because of the upcoming trial date.

Appellants also presented no evidence of their "extensive efforts" to locate an attorney. Renna states that they conducted a "diligent" search, but her declaration lacks any details such as the number of attorneys contacted and when they were first contacted. In any event, the court had accommodated the problem by granting numerous continuances and stays of proceedings.

Under these circumstances, appellants were, not deprived of a fair hearing.

v **Statutory Continuance**

Appellants contend the trial court erred by not considering their joint oppositions to the summary judgment motions. We presume the court considered all of appellants' opposition papers. (Evid. Code, § 664 ["It is presumed that official duty has been regularly performed"].) Although the court stated at the hearing that it only had one opposition, it meant that it only had one opposition addressing the substantive issues. The minute order granting the summary judgment motions clearly states that appellants only filed one opposition addressing the substantive issues.

In any event, if the court had reviewed the oppositions, it would have rejected appellants' contentions.

The summary judgment statute provides: "If it appears from the affidavits submitted in opposition to a motion for summary judgment .. that facts essential to justify opposition may exist but

cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just." (Code Civ. Proc., § 437c, subd. (h).)

As the court explained in *Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, this provision "mandates a continuance of a summary judgment hearing upon a good faith showing by affidavit that additional time is needed to obtain facts essential to justify opposition to the motion. [Citations.] Continuance of a summary judgment hearing is not mandatory, however, when no affidavit is submitted or when the submitted affidavit fails to make the necessary showing .... [Citations.] Thus, in the absence of an affidavit that requires a continuance ... , we review the trial court's denial of appellant's request for a continuance for abuse of discretion. [Citation.]" (*Id.* At pp. 253-254.)

"It is not sufficient under the statute merely to indicate further discovery or investigation is contemplated." (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 548.) To mandate a continuance, an affidavit must demonstrate "(1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts. [Citations.]" (*Wachs v. Curry* (1993) 13 Cal.App.4th 616, 623.)

No statutory continuance was mandated here. The declarations appellants submitted were inadequate. They failed to establish that essential additional evidence was necessary to oppose the motion was available but could not yet be presented. The declarants do not suggest what facts might exist to support an opposition to the motions for summary judgment. Only one attorney declared that he could not take the case because of the proximity of the trial date and due date for the oppositions to the summary judgment motions. But even that attorney did not affirmatively state that he would represent appellants but for the upcoming deadlines. He was still in the process of evaluating the case.

A discretionary continuance was not warranted either. At the

time of the hearing, the case had already been pending for 17 months. The court had already continued the summary judgment hearings for approximately four months, and had issued three 30-day stays of the proceedings. Appellants are not entitled to an unlimited number of continuances for an indefinite amount of time. The trial court gave appellants a reasonable period of time to employ new counsel to assist them with the preparation of opposition papers.

3. The Respondents' Motions for Summary Judgment[1]

Appellants did not challenge the substantive basis of any summary judgment motion except the motion filed by Mark Lurie. We must therefore determine whether the other 21 respondents each met their statutory burden of establishing entitlement to summary judgment.

"A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. [Citation.] We review the trial court's decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports. [Citation.] In the trial court, once a moving defendant has 'shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,' the burden shifts to plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff 'may not rely upon the mere allegations or denials of its pleadings ... but, instead, shall set forth the specific facts showing that a triable issue of material facts exists as to that cause of action ....' [Citations.]" (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476-477.)

v **Motions for Summary Judgment**

Respondents Jerome Unatin, Robert Grossman, Richard Glimp, James Ding, R. Michael Wyman, Michael Nakata,

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[1] All references to "the respondents" in this section include all of the respondents except for Mark Lurie. Lurie's summary judgment motion is addressed in the next section.

Benjamin Rosin, Lee Lindquist, COR Healthcare Association, and ID MED (the employer of Glimp, Nakata, and Ding) separately moved for summary judgment. Each contended that they complied with the applicable standard of care and did not cause decedent's death.

Each doctor submitted his or her own declaration stating that he is board certified or is a specialist, and is thoroughly familiar with the standard of care for physicians practicing in the medical community. Each declared that, based upon his education, training, and experience, the care and treatment they rendered to decedent complied with the standard of care for reputable doctors practicing in the medical community, and they committed no act or omission that harmed the decedent. Unatin, Grossman, Wyman, Nakata, Lindquist, and Rosin further declared that their respective acts or omissions did not cause or contribute to decedent's death.

Respondents Frank An, Marina Raikhel, and Torrance Family Medical Group, Inc. filed separate motions for summary judgment, asserting that they complied with the applicable standard of care and there was no causation. They submitted the supporting declaration of Melvyn Krause, a board certified physician specializing in family practice, who reviewed decedent's medical chart. Krause declared that the care and treatment of decedent rendered by An, Raikhel, and the nurses, agents and employees of Torrance Family Medical Group met the applicable standard of care in the community and they committed no acts or omissions to cause decedent's death.

Respondent Howard Resin moved for summary judgment, arguing that a breach of the standard of care and causation were lacking. To support his motion, Resin submitted the declaration of Bennett Roth, a board certified gastroenterologist and chief of the clinical gastroenterology department at UCLA. Based on his knowledge, skill, and experience, Roth declared that in his opinion Resin complied with the applicable standard of care and did not cause or contribute to decedent's death.

Michael Peter moved for summary judgment on the grounds of

no breach of the standard of care and no causation. He submitted the declaration of Susy Peng, a board certified specialist in internal medicine. She declared that she was familiar with the standard of care for a physician specializing in surgery such as Peter. Peng opined that based on her review of the medical records and education, training, and experience, Peter's care and treatment of decedent complied with the standard of care and was not a cause of his death.

Respondents Bruce Jackson, Gary Kissell, and Thomas Lawrence moved for summary judgment on the grounds of no breach of the standard of care and no causation, as a matter of law. They submitted declarations stating that they never provided any care or treatment to the decedent, nor were they asked to render any care to the decedent.[2] Edward Piken filed a similar motion arguing that causation was lacking and declaring that he never treated decedent.

Little Company of Mary Hospital and Torrance Memorial Medical Center filed a summary judgment motion contending that the care and treatment of decedent in each facility met the applicable standard of care and there was no causation, as a matter of law. They filed the declaration of a registered nurse, Janet Geier, who attested she was thoroughly familiar with the standard of practice for a staff nurse. She concluded that, based on her review of decedent's medical records, the treatment rendered at both hospitals complied with the applicable standard of practice, and the nurses did nothing to cause or contribute to the death of the decedent.

v **Discussion**

All of appellants' claims are premised on a medical malpractice claim. Medical malpractice is a cause of action for professional negligence. It is shown by demonstrating: (1) the standard of care in the professional community; (2) the doctor's

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[2] Appellants moved to correct the record on appeal by including a page of Jackson's declaration missing from the clerk's transcript. We granted this part of appellants' motion.

failure to meet that standard; and (3) the patient's harm was caused by the doctor's deficient care. (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1077.)

The core issue in a medical malpractice cause of action is whether the defendant breached the prevailing standard of care in the community with respect to the type of treatment which the plaintiff claims caused his or her injury. (*Landeros v. Flood* (1976) 17 Cal.3d 399, 410.) "'The standard of care in a medical malpractice case requires that medical service providers exercise that ... degree of skill, knowledge and care ordinarily possessed and exercised by members of their profession under similar circumstances. The standard of care against which the acts of a medical practitioner are to be measured is a matter peculiarly within the knowledge of experts; it presents the basic issue in a malpractice action ....'" (*Barris v. County of Los Angeles* (1999) 20 Cal.4th 101, 108, fn. 1, citing *Alef v. Alta Bates Hospital* (1992) 5 Cal.App.4th 208, 215.)

A plaintiff in a medical malpractice action must prove causation "within a reasonable medical probability based upon competent expert testimony." (*Jones v. Ortho Pharmaceutical Corp.* (1985) 163 Cal.App.3d 396, 402.) A "mere possibility" that defendant's negligence caused a plaintiff's injury is not sufficient. (*Morgenroth v. Pacific Medical Center, Inc.* (1976) 54 Cal.App.3d 521, 533.)

To be entitled to summary judgment, a defendant must establish that a cause of action has no merit by showing that one or more of the elements of the cause of action cannot be separately established, or that there is a complete defense to that cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).) Once the defendant makes that showing, the burden shifts to the plaintiff to demonstrate that a triable issue of one or more material facts exists as to that cause of action or defense thereto. (*Ibid.*)

Appellants did not submit any evidence to demonstrate that the

respondents were not entitled to summary judgment.[3] We therefore confine our review to the evidence submitted in support of the motions of the respondents.

The declarations and curriculum vitae submitted in support of respondents' summary judgment motions establish the expert credentials of each declarant.[4] A properly qualified defendant in a medical malpractice action may offer opinion testimony on the standard of care. (See *Willard v. Hagemeister* (1981) 121 Cal.App.3d 406, 413.) Here, the declarants stated their familiarity with the standard of practice for doctors or nurses in the community. They also explained the nature of decedent's physical condition and described the care and treatment of decedent.

In particular, Unatin, an orthopedic surgeon, declared that he diagnosed decedent's broken foot. He placed decedent's foot in an orthopedic boot, and the fracture healed.

Glimp, an infectious disease specialist, treated decedent's osteomyelitis. The infection healed, and he followed up until decedent's family dismissed him. Ding, an infectious disease specialist, monitored decedent while on-call for another doctor. Another infectious disease specialist, Nakata, did not examine or treat decedent, but called in a test to check his blood sugar.

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[3] On appeal appellants claim that they were unable to do so due to their in pro. per. status. "[S]elf-representation is not a ground for exceptionally lenient treatment." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) Litigants who are in pro. per. should be treated like other parties and are entitled to the same consideration as other attorneys and litigants. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

[4] The record on appeal does not include the curriculum vitae for each declarant. This omission could have arguably been grounds for excluding their opinions for failure to state the qualifications as an expert, but appellants failed to object to the declarations before the hearing of the motions for summary judgment and cannot now raise any objections on appeal. (Code Civ. Proc., § 437c, subd. (b); *Guthrey v. State of California* (1998) 63 Cal.A.pp.4th 1108, 1119,-1120 [evidence offered in support and opposition to motion for summary judgment subject to same evidentiary rules as evidence offered at trial].)

Wyman, a cardiologist, attended to decedent while he was on-call at Torrance Memorial.

Rosin, a cardiologist who was asked to give a second opinion, noted that decedent had various medical problems and recommended reducing certain medications. He never saw decedent again nor was he involved in his medical care.

Grossman, a cardiologist, examined decedent, conducted tests, and determined that he had no acute cardiac condition which required further cardiac care.

Lindquist, a specialist in internal medicine and infectious diseases, provided a second opinion consultation on two occasions. He discussed his initial findings of no infection and no acute problems with Renna.

Resin did a gastroenterology consultation because decedent was eating or drinking less. Resin recommended laboratory tests, treatment for constipation, and asked dieticians to provide special assistance. Resin later performed an emergency endoscopy which revealed significant gastrointestinal bleeding and ordered a surgical consultation.

Peng declared that Peter determined that decedent was a proper surgical candidate, surgery was necessary, Peter obtained the appropriate consent, and he rendered appropriate post-operative care.

According to Krause, Raikhel provided office or ambulatory care and treatment to decedent on numerous occasions and referred him to appropriate specialists when necessary.

Krause also declared that An properly examined decedent for numbness or tingling after decedent broke his elbow. On another occasion, An properly ordered laboratory tests for decedent who was complaining of stomach flu without diarrhea. An later examined decedent who complained of pain in his arm. He prescribed pain medication and appropriately referred him to an orthopedist. Most recently, An authorized decedent's admission to Torrance Memorial, arranged for his care to be taken over by appropriate specialists, and ordered a cardiology consultation and

laboratory tests.

The nurses at Torrance Memorial Medical Center and Little Company of Mary Hospital properly documented significant medical events regarding decedent's care, followed the physicians' orders to the extent the family would permit, documented decedent's understanding of orders, and were attentive to all of his needs and requests.

The declarations provide a sufficient factual basis for the conclusion that each respondent appropriately treated decedent, or in the case of Jackson, Kissell, Lawrence, and Piken, never treated the decedent, and could not have caused his death. Each respondent met the burden of demonstrating that appellants cannot establish that their respective care and treatment of decedent fell below the standard of care for a medical professional and/or that their care and treatment caused the decedent's death. The burden then shifted to appellants to demonstrate that a triable issue of material fact exists regarding appellants' causes of actions. (Code Civ. Proc., § 437c, subd. (p)(2).) Appellants presented no evidence and thus failed to meet their burden. Based on the uncontradicted evidence before it, the trial court properly granted the respondents' motions for summary judgment.

v **Lurie's Motion for Summary Judgment**

Before her withdrawal, Moyer prepared and filed opposition to only one summary judgment motion, the motion filed by Mark Lurie.

Lurie moved for summary judgment on the grounds that he adhered to the applicable standard of care and did not cause the death of decedent. In support of his motion for summary judgment, Lurie submitted the declaration of Dr. Susy Peng. She set out her qualifications as a medical expert, including her board certification as a specialist in internal medicine, and her familiarity with the standard of care required for a doctor specializing in internal medicine and cardiology such as Lurie. Based on decedent's medical records and Dr. Peng's education, training, and experience as a physician, she stated her opinion that the care provided by

Lurie to decedent "adhered to the standard of care at all times, and was not a cause of the [decedent's] demise."

Lurie first saw decedent in a cardiology consultation, confirmed decedent's history of severe cardiac disease, examined him, and ordered laboratory tests and medications. Lurie appropriately discharged decedent from the hospital when his cardiac and kidney functions were stable and his fluid status was balanced. Lurie monitored decedent after he underwent abdominal surgery.

With this evidence, Lurie met his burden of demonstrating that appellants cannot establish two necessary elements of the professional negligence claim: that Lurie's care of decedent was below the standard of care for a medical professional, and that Lurie's care and treatment caused decedent's death. The burden then shifted to appellants to "set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto." (Code Civ. Proc., § 437c, subd. (p)(2).)

"Substantial" responsive evidence is needed. Evidence giving rise to no more than speculation is not enough to demonstrate a triable issue of material fact. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163.) The opinion of an expert will not prevent summary judgment if it is speculative, vague, or based on unsound reasoning. (See *Bay Area Rapid Transit Dist v. Superior Court* (1996) 46 Cal.App.4th 476, 482.) "[A]n expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based. [Citations.]" (*Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493, 510.)

As the trial court observed, appellants failed to present any specific facts demonstrating any triable issues concerning Lurie's care and treatment of decedent. Dr. Edward Woerz, plaintiff s expert, merely declared that Lurie "failed to provide adequate diagnosis or proper treatment, specifically failing to take overall responsibility for the patient's medical condition." He stated no

specific reasons for his opinion and failed to demonstrate causation related to his opinion. We conclude that his declaration is too vague to raise a triable issue of material fact. Accordingly, the trial court properly granted summary judgment in favor of Lurie.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

HASTINGS, J.*

We concur:

EPSTEIN, P. J.

CURRY, J.

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*Retired Associate Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 4

March 15, 2006

Olga Ostoposides
1407 Cota Avenue
Torrance, CA 90501

Renna Ostoposides, et al.
v.
Richard Glimp, M.D., et al.

B161058
Los Angeles County No. YCO39166

THE COURT:

Petition for rehearing is denied.

Cc: All Counsel
File

APPENDIX C

Court of Appeal, Second Appellate District, Div. 4 – No. B161058
S142565

IN THE SUPREME COURT OF CALIFORNIA

En Banc

OLGA OSTOPOSIDES, Plaintiff and Appellant,

v.

RICHARD GLIMP, Defendant and Respondent.

Petition for review DENIED.

[Filed May 17, 2006]

_____

Chief Justice

APPENDIX D

B16058

IN THE COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 4

OLGA OSTOPOSIDES, RENNA OSTOPOSIDES, HARRY OSTOPOSIDES, SOCRATES OSTOPOSIDES, ESTATE OF JOHN OSTOPOSIDES
Plaintiffs and Appellants
vs.
RICHARD GLIMP, M.D., et al.
Defendants and Respondents

APPEAL FROM THE SUPERIOR COURT FOR LOS ANGELES COUNTY
CASE NO. YC39166
RAMONA SEE, JUDGE

APPELLANTS OPENING BRIEF

OLGA OSTOPOSIDES, RENNA OSTOPOSIDES, HARRY OSTOPOSIDES, SOCRATES OSTOPOSIDES
PLAINTIFFS AND APPELLANTS IN PROPRIA PERSONA
1407 COTA AVENUE
TORRANCE, CALIFORNIA 90501 (310)782-1673

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INTRODUCTION

In February 1999 Plaintiffs Father John Ostoposides fell and fractured his left foot. Dr. Jerome H. Unatin was the Orthopedic Surgeon who treated John Ostoposides for approximately three months for the fracture. Towards the end of those three months Plaintiffs father was still complaining of constant pain and swelling in his left leg. Dr. Jerome Unatin assured John Ostoposides that his fracture had healed and his solution for the pain was to send John Ostoposides to physical Therapy. Realizing that something was very wrong with this diagnosis because her father could hardly walk, Plaintiff Renna Ostoposides took her Father to the emergency room at Torrance Memorial Hospital on June 8,1999. The ER room doctors informed them that John Ostoposides fracture had not healed as Dr. Jerome Unatin had assured John Ostoposides that it had, and that the fracture had become infected causing him to have a condition know as Osteomyelitis. They told John Ostoposides that he needed to stay in the hospital for six weeks of treatment because this was a serious infection of the bone. The Medical records stated: **x-ray impression: fracture of this fifth metatarsal perhaps with only minimal changes of healing since 2/6/99.** John Ostoposides at the time of admission had no other complaints except the swelling in his left leg as well as the pain. This is reflected in the medical records. **Review of systems: Except for the left foot pain, the only other significant complaint that the patient has is leg swelling which he notes to be chronic. The Patient denies Chest Pain abdominal pain or shortness of breath. He has no fever. The remainder of the review of systems is negative.** All John Ostoposides Vital signs were clear and normal and he was in no way in any distress. When he was admitted to the hospital all his vital signs as well as vital organs were functioning normally as is reflected in the medical records: **The patient has been evaluated here with screening laboratory studies which remarkably show**

completely Normal Chem 20 panel and a Normal White blood cell count and CBC.

John Ostoposides had a long history of congestive heart failure, his left leg was swollen due to the infection in his left lower leg and not his congestive heart failure as is reflected in the medical records: **Summary, He is admitted with left foot pain swelling and has evidence of cellolitis, fracture, and possible Osteomyelitis.** My father was alert and mentally sharp (as always) when he entered the hospital as is reflected in the medical records: **General Appearance: That of a well-developed, loquacious, (very talkative) white male in no Acute distress. Nurse Documentation: "Talkative".** They assigned a Dr. Richard Glimp as the infectious disease doctor to take care of his left leg infection. Plaintiff Renna Ostoposides had been leaving messages for Dr. Glimp to call her. He did not. In the mean time John Ostoposides had been requesting to the doctors and nurses that he be given his lasix medicine, because the amount he was taking before he entered the hospital was 250 mg a day and they only put him on 40mg a day, as is reflected in the medical records: **Medication Administration Record 6-8-99 Lasix 40 mg daily po.** Then in the record it states: **Patient states was on 240 mg of lasix bid @ home.** Although as evidenced in the medical records John Ostoposides kept crying out telling them he needed to be on 250 mg of Lasix, they completely and consistently ignored him. John Ostoposides said to his daughter " I can't believe that this is happening to me while I'm in a hospital." He became extremely concerned. When Dr. Richard Glimp finally got in touch with Daughter Renna Ostoposides she asked him to give her father his Lasix medicine. He assured her he would. He didn't. She called Dr. Richard Glimp several times to give her father his lasix, each time he said he would, but he never did. John Ostoposides at this point was distraught. Finally Plaintiffs Renna Ostoposides went to see her father and found his entire body blown up like a balloon. She immediately called Dr. Richard Glimp who told her he would

have the water in John Ostoposides entire body down in two days. Daughter Renna Ostoposides saw that her father had a 4 level plus edema and knew that the level of water that had been allowed to accumulate in her fathers body was massive and would take weeks to properly eliminate. Recognizing Dr. Richard Glimp's attempt to try and minimize this serious situation she contacted a Doctor friend Dr. Ed Woerz down to the hospital to evaluate the situation. In the meantime Plaintiff Renna Ostoposides had been calling the cardiologists who were supposed to be taking care of her father to no avail. A Cardiologist by the name of Dr. Thomas Lawrence went to see my father, in the meantime Dr. Robert Grossman who was the original cardiologist assigned to my father had not been to see him. When Renna Ostoposides spoke with Dr. Thomas Lawrence he wouldn't acknowledge that her father was in congestive heart failure. When Dr. Ed Woerz the Doctor Renna Ostoposides called to come to the hospital to evaluate the situation with her father got to the hospital he saw that her father had a four level plus edema and acknowledged that her father was in congestive heart failure. After viewing her fathers' medical chart he discovered that her father had entered the hospital with completely normal vital organ functions and now his vital organs were not functioning normally. He also discovered that Dr. Robert Grossman the original cardiologist who had seen him had him on a drug called beta pace. He showed Renna Ostoposides that medical journals indicate that clearly you do not administer this drug to any one who is in congestive heart failure. He went on to state to her that clearly no one is paying attention to your fathers' condition or following up with him. Armed with this information Renna Ostoposides immediately contacted the cardiologist Dr. Lawrence who was on call for Dr. Grossman because he was suppose to be taking care of him. This was the forth of July weekend, a Dr. Bruce Jackson was on call for Dr.Lawrence, Renna said "My father is in congestive heart failure and you have him on Beta Pace " I'll make sure I take him off it immediately" he said and then

told her "Call me tomorrow". When she called the next day as he asked her to a doctor Ray Michael Wyman came to the phone for Dr. Bruce Jackson she informed him that she was calling to see if Dr. Bruce Jackson had taken her father off the Beta Pace very arrogant and sarcastic he said to her that he did however when Renna Ostoposides immediately went down to the hospital after speaking to Dr. Ray Michael Wyman who had assured her that Dr. Bruce Jackson had taken her father off the beta Pace she discovered that he had not. The Nurse on Duty said to her "I told the doctors that your father should not be on the Beta Pace because he is in congestive heart failure, but they would not listen to me. Renna had the nurse immediately call Dr. Ray Michael Wyman and take her father off the Beta Pace. Then they started giving her father massive doses of lasix unmonitored. Dr. Ed Woerz the doctor friend she had called to evaluate her father said they need to strictly monitor his output and vital signs while administering these large doses. Not only did the doctors not closely monitor it, but also the nurses would constantly not measure his output, his bell was rarely answered in an appropriate time frame, and many times would completely go unanswered. One night John Ostoposides started speaking to his daughter Renna Ostoposides in an extremely disoriented fashion, she called the nurse and told her to call the doctor immediately. The nurse said they could not unless they felt her father was disoriented and they felt he was fine. Knowing with certainty that this was definitely not the case Renna Ostoposides went looking for somebody to help discern what was happening. She contacted the hospital at this point regarding the situation, they were not responsive at all. In the meantime her fathers primary care physician Dr. Marina Raikhel was informed that he was in the hospital, but never came down once to see him. While in the hospital John Ostoposides told his daughter Renna Ostoposides that he had gone to see Dr. Marina Raikhel before to inform her about the fact that his leg was not getting better and told her that he could barley walk across the room and was having a

hard time getting to the bathroom because of the pain involved in walking on his leg. Her father told her that the situation made it impossible for him to keep up with the constant demand that his high doses of Lasix placed on him to reach the bathroom in time because of the excruciating pain in his foot. As soon as Dr. Marina Raikhel heard this she abruptly shouted at him that she would not be his doctor anymore and stormed out of the room abandoning him. As she was storming out her assistant who was in the room with her and witnessed the entire event tried to stop her as she was leaving the room saying "He isn't saying he doesn't want to take his medicine, he's just telling you how difficult it is for him to get to the bathroom all the time with his leg pain." Dr. Marina Raikhel totally ignored her assistant and walked out on him. She did nothing to evaluate his situation and abandoned him, thus leaving his Osteomyelitis further undiagnosed. Renna Ostoposides could see that Dr. Marina Raikhels actions caused her father serious emotional distress. She hardly believed her ears when she heard the story. Now she realized why Dr. Marina Raikhel had not been showing up to the hospital. Renna Ostoposides contacted Dr. Marina Raikhel to intervene in the situation, she would not come but said she was going to send second opinion doctors for her and pretended that she could not transfer him to Little company of Mary Hospital as Renna Ostoposides was asking her to do. When the doctors for second opinion came they all backed the story that everything was just fine and denying that anything was wrong. However this was completely contrary to the **discharge summary transfer notes that stated John Ostoposides had Acute Renal failure, Dehydration and severe mental confusion,** all symptoms John Ostoposides was totally free and clear of as his medical records clearly prove as he entered Torrance Memorial Hospital

With that the family finally transferred him over to Little Company Of Mary Hospital. Though explicit and clear instruction was left to the new doctors as well as the hospital to make sure Dr. Glimp did not come near John Ostoposides or his family members

Dr. Richard Glimp disregarded them and not only came to see Mr.Ostoposides the morning of his transfer at Torrance Memorial Hospital, but once Mr. Ostoposides arrived to Little Company of Mary Hospital he was lurking outside his hospital room. The family immediately contacted the administration of Little Company of Mary Hospital and asked them to inform all personnel as well as the nurses and doctors that Dr. Richard Glimp was not to come near John Ostoposides or his family. This entire time the family was pleading with Gastroenterology doctors Ed Piken and Howard Resin to give John Ostoposides a feeding tube because he was barely eating. They never did.

He was further treated for all his condition at Little Company of Mary Hospital and discharged to be closely followed by Dr. Mark Lurie on Aug 4, 1999. On Aug 8, 1999 due to abdominal pain he returned to Little Company of Mary Hospital. Dr. Michael Peters a surgeon at the hospital told Mr. Ostoposides family that he needed to take him to surgery immediately because he was bleeding. In reviewing the Medical records Dr. Ed Woerz had discovered that no surgery was necessary for John Ostoposides at all as He underwent emergency endoscopy and no active bleeding was found. Because Dr. Woerz was familiar with all John Ostoposides just recent history at Torrance Memorial Hospital he informed the family that not only did he not need the surgery but that their father was in no way in any condition to have been taken to surgery given his weakened condition from all the incidents at Torrance Memorial Hospital.

Renna Ostoposides then remembers her mother telling her that on the morning of August 19, 1999 her father was having difficulty breathing. Her mother went twice to the nurses' station to report that he could not breath. They ignored her both times. The family then received a call that their Father was in the intensive care unit of the hospital. On August 20, 1999 unable to keep up with the negligence of his caretakers, our father died.

On November 20, 2000 the Plaintiffs filed a wrongful Death lawsuit. Though on November 27, 2000 we signed a retainer for Attorney Diane Goldman to represent us in this matter, unknown to us she never substituted into the case and sat on it for 5 months. On June 28, 2001 we signed a contingent fee agreement with Attorney Lynn Moyer to represent us, and the day she substituted into the trial the trial court set the trial date for Nov.13, 2001. Attorney Lynn Moyer having done very little to adequately prepare the case for trial, on September 17, 2001 filed an Ex Parte application to shorten time to file a motion to be relieved as counsel that was based on false allegations. The trial court granted her motion on the eve of trial with several Motion Summary judgments on calendar as well as a ton of outstanding discovery that was untouched and had been sent to the Plaintiffs from the other side. Despite the fact that at three different hearings thereafter the Plaintiffs informed and brought evidence to the trial court that every attorney they spoke to could not take the case unless the trial court changed the trial date as they said, the case though meritorious was a large case and not developed enough by the last attorney. The court would not change the trial date leaving Plaintiffs as involuntary pro per litigants at their Motion Summary Judgment Hearing where the judge disposed of the case by granting all defendants Motion summary judgments without even considering the Plaintiffs oppositions to defendants Motion summary judgments that plaintiffs had filed. After the MSJ hearing even though the judge knew Plaintiffs were involuntary pro per litigants proceeding in Forma Paperis she granted fifty thousand dollars in cost to defendants of six major law firms. Plaintiffs then filed their appeal on August 9, 2002. (CT. p.2165)

STATEMENT OF THE CASE

A. The Underlying Lawsuit

On November 20, 2000, plaintiffs/appellants filled **in proria persona,** an action against defendants and real parties in interest herein, for wrongful death, professional negligence, medical malpractice and loss of consortium in connection with the death of their father, JOHN OSTOPOSIDES **(CT P. 29).**

Immediately thereafter, on November 27, 2000 plaintiffs retained the services of attorney Diane Goldman to represent them in connection with this matter. **(Writ Exhibit 16)** [1/] Despite the fact that plaintiffs had sighed a Retainer Agreement with attorney Goldman, on or about April, 2001, it was later discovered that attorney Goldman simply "sat" on the case for approximately five months, never formally substituted into the case or commenced any work on plaintiffs' behalf **(RT A-10, II.11-14)**

Thereafter, on or about June 28, 2001, plaintiffs retained attorney Lynn Moyer to represent them in this case on a contingency fee basis **(SCT p.399, II.14-15).**

At a Status Conference held on June 29, 2001, the trial court **speedily and prematurely** set the case for trial to commence on November 13, 2001. At this time, some of the answers from defendants/real parties of interest herein were not yet filed, and the case was not yet even at issue **(SCT p.387, II.16-18).**

Since the inception of plaintiffs entering into their Retainer Agreement with Lynn E. Moyer, Esq. to represent them in this matter, Attorney Moyer did little to adequately prepare their case for the upcoming trial. Thereafter, less than two months before the November 13, 2001 scheduled trial date, on September 17, 2001, attorney Moyer made an Ex Parte Application To Shorten Time To File a Motion To Be Relieved As Counsel **(SCT p.385)**

On September 24, 2001 **pursuant to an ex parte motion to shorten time (SCT p.402),** respondent trial court granted plaintiffs' attorney's motion to withdraw from the case on the **eve**

[1/] Plaintiffs filed and were granted ability by this court to take Judicial Notice of Writ under case No. B157205 and exhibits three volumes on March 15 2004.

of trial which was scheduled for November 13, 2001 **(CT.p.1265).** At the time the trial court permitted plaintiffs attorney to withdraw, plaintiffs had numerous items of discovery which they needed to respond to, numerous motions for summery judgment against them were scheduled for hearing, very little discovery had been conducted by plaintiffs attorney and little or no preparation had been made by the attorney for the upcoming trial then scheduled for November 13, 2001 **(CT p.1245, II.11-19).** It is crucial to note that the defendants/real parties in interest herein are represented by **six** major law firms. **Plaintiffs throughout the majority of respondent trial court's proceedings have been and still are, without counsel.**

Plaintiffs contend that their attorneys withdrawal from their case on the **eve of trial** (approximately a month and a half before the then scheduled November 13, 2001 trial date) was **illegal** and in violation of **California Rules of Professional Conduct, Rule 3-700(2). (See Legal Discussion hereto.)** Plaintiffs timely filed their opposition to the motion to withdraw setting forth their stated contentions **(CT p.1178)**

Despite plaintiffs' contention that their attorney's request to be relieved as counsel on the eve of trial, with multitude of outstanding discovery to be completed, as well as preparation for the upcoming trial and numerous summary judgment and other motions on calendar would severely prejudice their case, and would effectively prevent them from timely obtaining other counsel, if at all, and leave them to fend for themselves
at a trial which they were not competent to handle on their own **(CT p.1178),** on September 24, 2001 this Court granted attorney Lynn Moyer's motion to be relieved as plaintiffs' counsel herein, permitted her **immediate** withdrawal **(CT p.1265),** and failed to make any inquiries whatsoever as to the status of plaintiffs' case or

take any action to protect plaintiffs interests as **mandated** by the **California Rules of Professional Conduct (RT-A-1 thru A-16).**[2/]

During the hearing on the motion to be relieved as attorney of record, the trial court failed to make any inquiries whatsoever as to the status of the case with regard to the effect that permitting plaintiffs' counsel to withdraw only a month and a half before trial would have on plaintiffs' case or weather the attorney had complied with **California Rules of Professional Conduct, Rule 3-700(2)** which mandates that "a member cannot withdraw from employment until the member has taken reasonable steps to avoid reasonable foreseeable prejudice to the rights of the client, including giving notice to the client, **allowing time for employment of other counsel...**" Rather, during the course of the hearing, it was clear that the trial court's paramount concern was for that of the defendants/real parties in interest herein **(RT A-5, II.17-28; A-6 thru A-16)**

Plaintiffs' further contend that the trial court's failure to continue the trial date **for a sufficient period of time** (which was speedily set before all of the defendants Answers had even been filed, and before the case was even at issue, with plaintiffs then counsel substituting into the case only one day before the Status Conference at which the trial date was set), scheduling of numerous separate summary judgment motions by defendants/real

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[2/] Throughout these transcripts, references have been made by the trial court concerning alleged "numerous hearings in the past"; that the court has been waiting for plaintiffs to get counsel; that "this case has been delayed and delayed", specifically, at the hearing on plaintiffs' former attorney's motion to withdraw held on September 24, 2001. It is important to note that the statements contained in the transcripts regarding the number of plaintiff's appearances before the trial court with respect to continuances in order to obtain counsel prior to our former attorney's motion to withdraw are misleading. See Declaration of Renna Ostoposides in Writ of Mandate, which represents a true and accurate statement concerning the appearances by plaintiffs since the date of filing of plaintiffs summons and complaint on November 20, 2000.

parties in interest to be heard on March 21, 2002 (and giving plaintiffs only three days to oppose same), and after permitting their attorney to **illegally withdraw without protecting their rights** and leaving them without counsel and to fend for themselves, violates their **due process right** to a hearing under the **United States Constitution,** which includes a right to be represented by counsel **(See Legal Discussion Hereto).**

In their opposition to the motion to withdraw, plaintiffs requested that the court continue the trial; suspend discovery and the discovery cut-off dates, etc. to permit them sufficient time to obtain other counsel for a period that was "just and reasonable". In response to their request, the trial court simply granted plaintiffs an **"alleged"** 30-day stay of the proceedings, and continued the trial date to **March 14, 2002, and stated unequivocally that she would not continue the trial date again (RT- A10, II.15-17)**

While the trial court did **reluctantly** grant plaintiffs a 30-day stay in this matter (although plaintiffs requested significantly more time), to permit plaintiffs time to hire an attorney, defendants/real parties in interest ignored the stays, and continued to mount their defense by continuing to vigorously engage in discovery, i.e. subpoenas, etc. **(See Writ-Exhibit 15 – two volumes).** While plaintiffs presented this evidence to the trial court and in fact requested sanctions against defendants/real parties in interest herein on two separate occasions **(SCT p.435 and CT p.1339),** the trial court refused to even acknowledge or rule on plaintiffs numerous requests for sanctions, failed to even admonish defendants/real parties in interest for their flagrant violations of any of the stay orders, and in essence allowed them to continue to mount their defense against plaintiffs lawsuit and permitted them to take advantage of the fact that plaintiffs were not represented by counsel—the very counsel that the trial court permitted to **illegally** withdraw on the eve of trial without first protecting plaintiffs' rights as mandated by law. **(See Writ-Exhibit 15; two volumes and RT p.D-7, II.22-28; RT p.D-8, II.1-16).** By its conduct, the

trial court sent a clear signal to defendants/real parties in interest that it was not going to enforce its stay order and that defendants/real parties in interest were free to do as they pleased.

Because plaintiffs were unable to locate an attorney who was willing to take their case with an imminent trail date approaching, on October 31, 2001, plaintiffs made their Ex Parte Application For Order Extending Stay of Proceedings and for Continuation of Trial Date **(SCT, p.426).** While the trial court **reluctantly** granted plaintiffs Ex Parte Motion to Extend Stay and only granted plaintiffs an additional 30-day stay, which expired on December 1, 2001, **the trial court again, refused to continue the trial date (CT p.1243)**

Plaintiffs continued to encounter the same problem with all of the numerous prospective attorneys with whom they consulted—their belief that the case was underdeveloped, the trail date was too close and they needed much more time. Thus, on December 3, 2001 plaintiffs were required to make another Ex Parte Application For Order Extending Stay of Proceedings and for Continuation of Trail date; Request For Sanctions **(SCT, p.435).** Respondent trail court **reluctantly** granted plaintiffs Ex Parte Motion To Extend Stay and only granted them an additional 30-day stay, which expired on January 1, 2002. Plaintiffs' outstanding discovery responses were ordered due January 15, 2002. **Plaintiffs' request for sanctions was ignored and not ruled upon (CT p.1273). The trial court again, refused to continue the trial date (CT p.1273; RT p. D-2, II.20-21)**
with each passing day, and because of the trail court's steadfast, arbitrary and unequivocal refusal to continue the March 14, 2002 trial date which was growing near, plaintiffs ability and chances of locating and hiring counsel grew even slimmer. Thus, because they were unable to locate counsel who was willing to take their case under the time constrains imposed by respondent trial court, on January 22, 2002 plaintiffs made their Ex Parte Application for Order Extending Stay of Proceedings and for Continuation of Trial

Date; Request for Sanctions. In their motion, plaintiffs presented the court with two declarations from prospective attorneys who were in the process of reviewing their case, who stated that they needed more time and that the trial needed to be continued for several months **(CT p.1339, pp.1354 and 1355).** However, the trial court refused to hear oral argument, and **denied** plaintiffs ex parte motion to extend stay and request for sanctions. **The trial court still refused to continue the trial date (CT p.1338)**

Also on this date, while the trial court denied plaintiffs motion to extend stay, etc., it **granted** defendants/real parties in interest, Torrance Family Practice Medical Group, Frank An, M.D. and Marina Raikhel, M.D.'s Ex Parte Motion for an Order Shortening Time for Motion to Compel plaintiffs Discovery Responses and for Sanctions, and the motion was scheduled to be heard on February 6, 2002 **(CT p.1338)**

Despite the fact that plaintiffs presented evidence to the trial court that they had no legal background and were unable to represent themselves, presented the trial court with declarations of prospective attorneys with whom Plaintiffs had consulted regarding their belief that the trial date is too close, that the case was not developed for trail, and that the trial needs to be continued to permit them sufficient time to review the case, conduct discovery, etc., for a period of approximately 13 months or more, the trial court nevertheless refused to continue the trail date to permit Plaintiffs time to hire an attorney and prepare for a trial, **presumably more concerned about compliance with the fast-track rules than with plaintiffs constitutional due process right to a hearing, which includes a right to be represented by counsel. (CT p.1244, SCT p.435, CT p.1339) Plaintiffs did not voluntarily give up their right to counsel, but were "forced" to forego their right to counsel when respondent trail court allowed their attorney to illegally withdraw from their case on the eve of trial.**

Plaintiffs simply wanted to have their day in court and avail themselves of their **constitutional due process right to a hearing,** which includes the right to be represented by counsel. The stays, which the trial court granted in this matter, were a sham, as defendants/real parties in interest were permitted to disregard the stays from their inception **(See Writ-Exhibit 15 two volumes).** Plaintiffs simply wanted to be put on even footing with defendants and have the trial proceedings stayed so they could obtain legal representation to oppose the numerous upcoming summery judgment motions, and have the trial date continued to approximately 13 months to enable their attorney to prepare their case for trial. The trial court's obvious paramount concern regarding its compliance with the fast- track rules **under the facts and circumstances of this case,** and in the **interest of justice,** clearly should not have operated to deprive plaintiffs of their basic constitutional right to be represented by counsel nor should the "fast-tract" policy concerns have outweigh this basic constitutional right. The simple act of staying the proceedings and continuing the trial date, along with the other presently scheduled pre-trial motions, etc. in order to permit plaintiffs sufficient time to obtain counsel and to familiarize themselves with the case, etc., would certainly have achieved this goal. **Fairness and justice** dictated that the trial court's proceedings should have been correctly stayed, and the trial date moved so that an attorney could have been given the opportunity to properly prepare the case for trial.

In an effort to protect their interest, on January 22, 2002, plaintiffs filed their Notice of Appeal appealing (1) Order Granting Attorney, Lynn Moyer's Motion to be Relieved as Attorney, entered on November, 2001; and (2) Order Denying Plaintiffs Motion To Stay Proceedings and To Extend Trial Date and Request for sanctions entered on January 22, 2002.

On or about January 30, 2002, defendants/real parties in interest Howard Resin, M.D. and Edward Piken, M.D. filed with this Court a Motion For Involuntary Dismissal, and Request For

Sanctions, and defendants/real parties in interest, Torrance Family Practice Medical Group, Inc., Frank An, M.D., Maria Raikhel, M.D. filed their Joinder to said motion on or about February 4, 2002, **Court of Appeal Case No. B156083,** and on February 14, 2002, plaintiffs filed their opposition to same.

On January 31, 2002, defendant/real party in interest Lee Linquist, M.D., filed his Ex Parte Application to Shorten Time to File a Motion for Summary Judgment. At this time, plaintiffs advised the trial court that they had filed a notice of appeal, and that the proceedings were stayed as a matter of law **(RT-F-4, II.17-23).** The matter was taken under submission, and the trail court later ruled that the **proceedings were stayed.** However, despite the acknowledgment of a stay by respondent trial court, Judge Romona G. See seemed to contradict or ignore her own ruling regarding the stay and continued on with the proceedings: she **granted** defendant/real party in interest Lee Linquist, M.D. Ex Parte Motion to Shorten Time to File Motion for Summery Judgment, and scheduled same for hearing on February 27, 2002, with plaintiffs opposition thereto due by February 14, 2002 **(CT p.1772).** Additionally, in that same ruling, respondent trail court scheduled a status conference regarding status of plaintiffs' notice of appeal for March 1, 2002 **(CT p.1772)**

On or about February 20, 2002, this Court of Appeal ruled that the orders from which plaintiffs appeal was taken were not appealable. This Court ordered plaintiffs appeal dismissed, and defendants/real parties in interest's request for sanctions was denied **(See Writ-Exhibit 28)**

At the hearing held on March 1, 2002, regarding the status of plaintiffs appeal, plaintiffs could not be present at the hearing due to a medical emergency **(See Declaration of Renna Ostoposides writ). (RTp.G-2, II.8-9)** Despite the fact that plaintiffs had telephoned the trial court on the morning of the hearing and before the hearing commenced to advise the court that they could not be present, the trail court nevertheless continued

with the hearing and set the hearing for all defendants summary judgment motions brought by defendants and real parties of interest herein, who are represented by six different law firms, for **March 21, 2002.**[3/]

Since the Court initially issued the first stay in this matter, Plaintiffs had diligently sought to obtain other counsel and toiled on a daily basis seeking to locate an attorney by calling various attorneys via Internet, personal and other attorney referrals, have literally contacted hundreds of attorneys, sent out letters, case synopsis, pleadings and even entire case files to attorneys for their review. However, while several attorneys had advised plaintiffs that their case is **meritorious** and had expressed interest in taking the case, they have also advised plaintiffs that they either have prior trial commitments, they do not have enough time to adequately conduct discovery, oppose the numerous summary judgment motions etc., and prepare for trial because of the trial date. Prospective attorneys have also advised plaintiffs that their malpractice insurance will simply not permit them to take the case with the time constraints as they presently stand **(CT p.1341, II.5-19).**

The 30-day stays **without a continuation of the trial date** had in effect, done little to facilitate plaintiffs' efforts to locate counsel. At the time of the first September 24, 2001 stay (after the court permitted plaintiffs counsel's illegal withdrawal from the case); the Court continued the trial to March 14, 2002 and discovery cut-off date to February 14, 2002. Additionally,

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[3/] Plaintiffs did not receive notice of this ruling until or on about March 4, 2002. The last day for Plaintiffs to file their opposition to all the scheduled summary judgment motions expired on **March 7, 2002 (California Code of Civil Procedure section 437c(b)**, thus giving Plaintiffs only **THREE days** to file their oppositions thereto, **in violation of (California Code of Civil Procedure section 437c(b)** which mandates that Plaintiffs should have **14 days** before the hearing to file their opposition to the summary judgment motions. **(See Declaration Renna Ostoposides- Writ)**

summary judgment motions were continued to February 11, 13 and 14, 2002 and expert witnesses to be designated by January 23, 2002. Because the trail Court had refused to continue the trial in this matter, the last two stays granted to plaintiffs had been ineffective; all of the attorneys which plaintiffs had consulted had unequivocally stated that notwithstanding the other time constraints set by the court, the trial date was just too close and because of the size of the case they would need several months to prepare for same.

Further, because only two depositions and very little discovery had been taken by plaintiffs and a unanimous belief that the case was substantially underdeveloped and clearly not ready for trial, prospective attorneys had advised plaintiffs that until they had assurances that the Court wouldl give them adequate time to prepare this matter **(at least 13 months),** neither they, or any other competent attorney would even consider taking the case **(CT p.1244, SCT. p.435 and CT p.1339)**

Additionally, the last stay, which was granted on December 3, 2001 and expired on January 3, 2002, was clearly ineffective for the purpose of obtaining counsel, due to the Chanukah, Christmas and New Year's holidays, which consumed most of the month of December. Plaintiffs were unable to even make telephonic contact with most attorneys during this period in order to schedule a consultation **(CT p.1341, II.20-25)**

Plaintiffs inability to timely locate counsel to represent them had been further hindered by the fact that despite the fact that the Court ordered a stay of proceedings which had been in effect since September 24, 2001, and the fact that the Court expressly spelled out to defendants/real parties in interest during the hearing on October 31, 2001, that a stay was in effect and that **"nothing" was to be done during the stay,** defendants had intentionally and willfully violated and ignored the Court's ruling and had continued to mount their defense by propounding and engaging in

voluminous items of discovery **(CT p.1342-1346 and Writ Exhibit 15 – two volumes).**

In order to attempt to protect their interests, it was necessary for plaintiffs to contact various copying services to obtain information regarding defendants/real parties in interests attempt to subpoena documents, and to keep records, and to constantly look over their shoulder in an attempt to protect themselves from defendants/real parties in interest's unscrupulous and unlawful conduct which was sanctioned by the trial court by its refusal to enforce its own stay order. Clearly, this time could and should have been better spent by plaintiffs in their effort to locate an attorney, which was the alleged purpose of the stay.

Writ Exhibit 15 (two volumes), represents the numerous items of discovery **illegally** obtained by defendants/real parties in interest during the period when the trial court issued its stay order. Despite this flagrant violation, the trial court simply ignored same, refused to even admonish defendants/real parties in interest, and simply ignored and refused to even rule on plaintiffs request for sanctions **(RT., D-7, II.22-28; RT D-8, II.1-8).**

After this court of appeal on February 20, 2002 ruled that plaintiff's orders regarding our attorneys' withdrawal on the eve of trial were not appealable, Plaintiffs on March 18, 2002, then filed a writ of mandate with this court of appeal regarding the superior courts allowing plaintiffs attorney to withdraw on the eve of trial under case No.B157205. On March 20, 2002 this court denied petitioners writ for extraordinary relief. On March 20, 2002 plaintiffs filed a petition for review with the supreme court of California under case No. S105296 regarding the denial of the writ of mandate by this court. On March 27, 2002 California State Supreme Court denied plaintiffs petition and on or about April 1, 2002 plaintiffs filed an application for immediate stay with the United States Supreme Court. On April 5, 2002 supreme court Justice O'Conner denied application for stay and on April 10, 2002 the application was redirected to Justice Scalia who in turn held a

meeting with all supreme court Justices on May 30, 2002 regarding the matter **(CT p.1979)** In the mean time on August 31, 2001 our then attorney, Lynn Moyer filed an opposition to motion summery judgment regarding defendant Dr. Mark Laurie before her withdrawal **(CT p.454-468; CT p.437)** and on January 28, and January 29, 2002 plaintiffs who were forced into an involuntary pro per position, due to all the previous actions of the court mentioned in this statement of the case, did their best to file oppositions to the numerous motion summery judgments filed by defendants. **(CT p.1640, 1647, 1654)** On April 18, 2002 plaintiffs, once again having been forced into an involuntary pro per position, came to court unrepresented and without the benefit of having an attorney and the judge without taking all of our oppositions to defendants motions for summery judgments into consideration, granted all defendants motion summery judgments. **(CT p.1927)** Her ruling thus constituted a manifest miscarriage of justice and abuse of discretion towards plaintiffs. At cost hearing after the motion summery judgment despite the fact that the judge knew we were proceeding in forma paupers then granted defendants $50,000 in cost against each plaintiff.

STATEMENT OF APPEALABILITY

On August 9, 2002 Plaintiffs filed a notice of appeal from multiple Motion Summary Judgments and adjudication orders. The Summary judgments are directly appeable according to Code of civil procedure 437c subdivision M1

LEGAL DISCUSSION

I.

THE TRIAL COURT PREJUDICALLY ABUSED ITS DISCRETION AND/OR DID NOT EXERCISE DISCRETION WHEN IT PERMITTED PLAINTIFFS' ATTORNEY TO WITHDRAW FROM THE CASE ON THE EVE OF TRIAL WITHOUT FIRST PROTECTING PLAINTIFFS' RIGHTS AS MANDATED BY LAW.

A. Plaintiffs' former counsel's Ex Parte Application For Order Shorting Time to Hear Her Motion To Withdraw, Which Was Granted By the Trial Court On the Eve of Trial, Was Per Se Illegal and Violative of The Rules of Professional Conduct.

> **California Rules of Professional Conduct, Rule 3-700** mandates that: "(2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably **foreseeable prejudice** to the rights of the client, including giving notice to the client, **allowing time for employment of other counsel..."**(Emphasis added).

In the case herein, on September 17, 2001, plaintiffs' former counsel, Lynn Moyer, applied to the trial court for an ex parte application for an order shortening time for a motion to be relieved as attorney of record for plaintiffs **(SCT p.385)** based upon **Several Misleading Allegations** that she and plaintiff Renna Ostoposides did not see "eye to eye on many matters" **(SCT p.388 II.1-3; II.16-19).** At this time the trial in the matter was set for November 13, 2001, **less than two months** away, with numerous motions for summery judgment made by defendants on calendar, numerous items of pre-trial discovery responses were outstanding

or which needed to be responded to by the October 15, 2001 discovery cut-off date. Further, there were many other pre-trial deadlines, i.e., designation of expert witnesses, etc.

It is important to note that Attorney Lynn Moyer substituted into the matter on June 28, 2001, and had only been representing plaintiffs for approximately three months. The following day after her substitution into the case, she attended a status conference on plaintiffs' behalf, where Judge Romana G. See speedily and prematurely set the case for trial for November 13, 2001 **(SCT p.394, II.11-13).** At the time Judge See set the case for trial, she admonished Attorney Moyer that "she would have to work around the clock" in order to prepare for the upcoming trial. **(RT 6/29/01 p.F-3 II 22-27)** [4/]Attorney Moyer agreed. **(See Declaration of Renna Ostoposides Writ) (RT 6/29/01 p.F-4,II.6).** Notwithstanding this fact, Attorney Moyer did not live up to her agreement, and wanted "out of the case". These facts were presented to the trial court in plaintiffs' opposition to Attorney Moyer's Motion to Be Relieved As counsel **(CT p.1178)**

Without discussing the merits of the motion to withdraw **(and the numerous misrepresentations contained therein)** and even assuming that the motion to withdraw was meritorious, clearly by its very nature, an ex parte motion to shorten time to bring the motion to withdraw **on the eve of trial** by an attorney is wholly improper and is per se violative of **California Rules of Professional Conduct, Rule 3-700(2)** which was designed to protect the client and prevent an attorney's **untimely** withdrawal which could prejudice the case, and to permit the client time to find counsel in order to effectively continue to prosecute their case. If Attorney Moyer felt that there was insufficient time to bring a **noticed** motion to withdraw, then clearly her withdrawal **via an ex**

[4/] Plaintiffs/Appellants have filed motion to augment record on 12/10/04 to include reporters transcript prepared 9/22/03 to be included in the record for this appeal.

parte order shortening time would not give plaintiffs sufficient time to locate other counsel before trial, as mandated by the **California Rules of Professional Conduct, Rule 3-700.** It should be noted that at no time did Attorney Moyer contend that plaintiffs did not have a meritorious case.

Despite this fact, the trial court not only granted Attorney Lynn Moyer's ex parte application for order shortening time, but also granted her motion to be relieved as counsel which was heard on September 24, 2001. At the hearing on the motion to withdraw, the trial court made no inquiries to Attorney Moyer with respect to the status of the case or whether her withdrawal at this time would prejudice plaintiffs case, and permitted plaintiffs Counsel to withdraw without protecting plaintiffs rights as mandated by law. The trial court simply granted plaintiffs a 30 day stay to find other counsel, continued the trial date to March 14, 2002, summery judgments motions to February 11, 13 and 14, 2002, and discovery cut-off 30 days before trial **(CT p.1199).**

In Van v. Shilleh, 54 Cal.App.3d 192, 126 Cal.Rptr. 401 (1975), the Court of Appeal addressed issues which are identical to the one presented herein. In **Van v. Shilleh,** the trial court refused to grant defendants a continuance to secure new counsel after the court permitted his attorney to withdraw from the case literally on the eve of trial. In denying defendant's request for a continuance of the trial, the court stated:

> Counsel, I appreciate your concern for your former client. However, the Court, as I have indicated, operates under a policy of no continuances, and, in addition to that, your man, your former client, has been apprised of the date of this trial and I see no grounds for him to continue this matter.... We cannot proceed in that manner; otherwise, our calendar would very shortly be in a horrible mess, and it's in excellent

condition due to the fact that we've had to take a hard line on these continuances".

In reversing the ruling of the trial court, the Court of Appeal stated:

"A denial to request a continuance constitutes an abuse of discretion where the ruling is arbitrary, Capricious and contrary to the interest of justice **under all the circumstances** (citations omitted) **At 197** (Emphasis added).

The **Vann** Court goes on to say:

It cannot be held that litigants in all cases may demand a continuance by engaging counsel just prior to a trial date, where there is no showing of any necessity for any change of counsel, but a necessary substitution of counsel just prior to trial may justify the granting of a continuance in some cases (citations omitted).

...The right of counsel to withdraw is not absolute. While Mr. Duke may well have been irked to see a settlement that he had negotiated fail of consummation, his withdrawal, for that personal reason on the very eve of trial was not ethical. Subdivision (2) of rule 2-111 of the Rules of Professional Conduct provides:'(2) In any event, a member of the State Bar shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.' **It was the duty of the trial court to see that Mr. Shilleh was protected, so far as possible, from the consequences of Mr. Duke's improper abandonment of his client."** (Emphasis added).

> "As we have indicated, the presiding judge made no effort to analyze the situation which Mr. Shilleh found himself. The denial by Judge Sothers was preemptory and based solely on a policy against continuances, without considering whether the case before it justified a departure from that salutary policy. Defendant was entitled to the exercise of an informed discretion; the record does not evidence any attempt to exercise any discretion." (Emphasis added).

In the case herein, as in **Vann, supra,** Attorney Lynn Moyer's withdrawal from plaintiffs' action, on the eve of trail, via an ex parte motion to shorten time to hear said motion, with outstanding discovery responses due, etc., and her failure to give plaintiffs adequate notice of the withdrawal and sufficient time to locate and hire an attorney, constituted an **improper abandonment** of her clients in violation of the **California Rules of Professional Conduct, Rule 3-700(A).**

Thus it was the duty of the trial judge, Judge Romona G. See, to see that plaintiffs rights, were protected from the consequences of their attorney's "improper abandonment" of her clients by simply continuing the trial date to a **sufficient** period of time to ensure that plaintiffs had ample time to employ counsel who could familiarize themselves with the case. **(Vann, supra, at 197.)** Clearly, under all the circumstances, and for the reasons set forth above, the three 30 day stays of proceedings (which defendants ignored) issued in increments did not serve to sufficiently protect plaintiffs' rights.

While **Vann v. Shilleh, supra,** involved a simple breach of contract action which that plaintiff could have possibly represented himself, plaintiffs' actions involved numerous complex legal issues, against numerous defendants which plaintiffs were not capable of prosecuting on their own without an attorney.

As in **Vann, supra,** the trial court's consistent refusal to continue the trial date was clearly and solely based upon her

concern for compliance with **the policy against continuances.** The record for the three proceedings in which plaintiffs requested an extension of the stay in order to hire an attorney **is replete** with statements from the trial court judge, Judge Romona G. See, that she "will not continue the trial date" **(RT-C-5, II.27-28; RT-D-2, II.20-21; RT-D-5, II.28; RT-D-6, II.1-7.)**

B. Even the Superior Court Guidelines For Continuances Dictate That The Trial Should Have Been Continued A Second Time To Permit Plaintiffs Sufficient Time To Locate Counsel and Familiarize Themselves With The Case.

California Rules of Court, Rule 15 Section 9 Which governs the Guidelines the Court should use in determining whether or not to grant a continuance of a trial date, provides in pertinent part as follows:

"Section 9. Policy regarding continuances in the superior court. To ensure prompt disposition of civil cases, each superior court should adopt a firm policy regarding continuances.... No continuance otherwise requested should be granted except in emergencies. A continuance should be granted only upon an affirmative showing of **good cause** requiring the continuance. In general, the necessity of the continuance should have resulted from an emergency occurring **after the trial setting conference** that could not have been anticipated or avoided with reasonable diligence and cannot now be properly provided for other than by the granting of a continuance. In ruling on a motion for continuance the court should consider **all matters relevant to a proper determination of the motion, including the court's file in the case and any supporting declarations** concerning the motion, the diligence of counsel, particularly in

bringing the emergency to the court's attention and to the attention of opposing counsel at the first available opportunity...the proximity of the trial or hearing date, the condition of the court's calendar and the availability of an earlier trial or hearing date **if the matter is ready for trial or hearing, ...**(Emphasis added) The following matters should, under normal circumstances, be considered good cause for granting the continuance of a trial date....

(4) Substitution of the trial attorney. The substitution of the trial attorney only where there is an affirmative showing that the substitution is required in the **interest of justice.**

(5) Significant change in the status of the case. A significant change in the status of the case where, because of a change in the parties or pleadings ordered by the court, **the case is not ready for trial**

In the case herein, on January 22, 2002 Plaintiffs made an Ex Parte Application To Extend Stay of Proceedings and for Continuation of the Trial Date. While the trial court had granted plaintiffs three previous 30-day stays, which were made in increments, for the reasons set forth hereinabove, those stays were clearly ineffective. In their moving papers, Plaintiffs attached Declarations of two attorneys who had expressed a serious interest in taking the case **(CTp.1354-1355).** Numerous other attorneys had expressed an interest in the case, but because of the time constraints of trial, the posture of the case as it presently stood, they would not take the case until the trial, etc., was continued for approximately a year. Additionally, Plaintiffs in their Application brought to the court's attention that defendants were violating the stay order and were continuing to conduct their defense, provided the court with proof of same **(CT p.1342-1346).** But the trial court refused to even hear oral argument, and denied plaintiffs motion **(CT p.1338)** [5/]

[5/] Although plaintiffs/appellants were in court for this hearing, Judge Ramona See without calling the matter before her ruled on the motion

The above-cited authority clearly supports the fact **under all the circumstances, and in the interest of justice,** good cause existed sufficient to continue the trial for **a second time,** to permit plaintiffs sufficient time to hire an attorney. Instead, the trial court stood by its unyielding and steadfast position and apparent overriding concern to comply with the "fast tract" policy no matter what and refused to continue the trial date **(RT p.C-5, II.9-16; II. 27-28) (RT p.D-2,II.20-21) (RT p.D-5, II.28; D-6,II.1; D-6,II.5-6)** The trial court's failure to follow the guidelines set forth in Section 9 above, clearly demonstrate an abuse of discretion. Clearly, the trial court's proceedings should have been stayed for a sufficient time to have permitted plaintiffs time to locate and hire experienced attorneys and permitted them time to familiarize themselves with the case, to conduct discovery, to oppose the upcoming summary judgment motions and to adequately prepare for trial.

II

THE TRIAL COURT PREJUDICIALLY ABUSED ITS DISCRETION AND VIOLATED PLAINTIFFS CONSTITUTIONAL RIGHT TO DUE PROCESS WHEN IT DENIED PLAINTIFFS MOTION TO EXTEND STAY AND TO CONTINUE THE TRIAL DATE.

A. The Due Process Clause Of the United States Constitution Guarantees Plaintiffs a Right to A Hearing, And that Right Includes A Right to Appear By Counsel.

B. The trial Court gave More Weight To Enforcing The Court's "Fast Track" Policy Than To Plaintiffs Constitutional Due Process Rights To A Hearing.

In **Mendoza v. Small Claims Court, 49 Cal.2d 668 (1958)** the court addressed the issue of whether the deprivation of a

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and did not allow plaintiffs to speak at the hearing. This is further evidenced by the reporters' transcript not having any notes for the hearing for 1/22/02. **(RT p. E-1, E-2)**

litigant's right to counsel constitutes a violation of due process wherein it stated:

> "The right to a hearing includes the right to appear by counsel (citations omitted) In its consideration of the right to counsel in Powell v. Alabame, supra, the United States Supreme Court declared; "What, then does a hearing include? Historically and in practice, in our country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. **Even the intelligent and educated layman has small and sometimes no skill in the science of law** ...If in any case, **civil or criminal,** a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing and, therefore, of due process in the constitutional sense... (citations omitted) 'It is urged that depriving a litigant of the right of counsel is a violation of due process. There can be little doubt that in both civil and criminal cases the right to a hearing includes the right to counsel, and that the arbitrary refusal of such right constitutes a deprivation of due process." **At 673. (Emphasis added.).**

The rule announced in **Mendoza, Supra,** was followed in **Vann v. Shilleh, supra,** wherein the court stated:

> The right to a hearing includes the right to appear by counsel... There is a constitutional basis for the right to counsel in **non-criminal** proceedings and, in its narrowest definition, it is the right to appear by counsel in any adversary proceedings in which the adversary party has the benefit of the right to counsel (citations omitted).

In the case herein, as set forth above, while clearly there exists a legitimate policy toward advancing matters to trial in order

to avoid a congested calendar, etc., however, even under the trial court's own guidelines for continuances **(California Rules of Court, Rule 15, Section 9, supra),** good cause clearly existed for the trial court to simply continue the trail date for what would only be a second time, in view of the fact that (1) the first trial date was speedily set, (2) counsel for plaintiff had only been in the case for one day, (3) the matter was set even before the case was at issue **(SCT p.394, II. 11-12) (RT 6/29/01 p.F-2, II.12-14) (RT 6/29/01 p.F-3, II. 22-23) (RT 6/29/01 p.F-5, II. 14-17) (RT 6/29/01 p.F-5, II. 26-28) (RT 6/29/01 p.F-6, II. 1-4)** (4) the trial court permitted plaintiffs counsel to withdraw on the eve of trial, in a matter which involves complex issues against numerous defendants with a multitude of motions on calendar leaving plaintiffs to fend for themselves;(5) court's refusal to enforce its stay order. (6) Plaintiffs clearly presented evidence that **no attorney** could take the case because of the pending trial date.

While the trial court's granting of the three 30 day stays may on its face appear as if the trial court was attempting to accommodate plaintiffs, the truth of the matter is that from day one because of the voluminous size and the condition the case was in (i.e. having to address numerous Motion Summary Judgments, Mountains of Discovery, take Depositions etc.) these conditions prevented **Any Attorney** from stepping into the case at all under the circumstances the trial court set forth for the Plaintiffs and the extensions of 30 day stays without a continuation of the trial date did nothing to accommodate the Plaintiffs ability to find counsel. The court's failure to enforce those stays by ignoring plaintiffs pleas for help and requests for sanctions thus permitting defendants to continue to engage in discovery during this entire "stay" period not only negates that intention, but clearly gave defendants an unfair advantage in the case. **(CT.1342-1346; Writ Exhibit 15 two volumes).** Not only had defendants been permitted to continue to mount their defense, but plaintiffs who had abided by the stay were already prejudiced by their former attorney when she was

permitted to withdraw on the eve of trial, leaving plaintiffs with an ill-prepared and underdeveloped case and no time to find another attorney. At all three proceedings in which Plaintiffs requested the trial court to permit them sufficient time to locate an attorney, they had presented uncontroverted evidence of their extensive efforts to locate an attorney, and had even attached Declarations of prospective attorneys **(CT p.1354-1355).**

Further, the above-cited authorities make it clear that a litigant in a civil proceeding has a constitutional right to due process, and that right includes the right to be represented by counsel. This fundamental constitutional right clearly outweighs the superior court's "fast track" policy, under the circumstances as set forth herein. The trial court's refusal to extend the stay of proceedings, continue the trial date only for the second time to permit plaintiffs time to hire an attorney and familiarize themselves with the case, certainly constitutes a prejudicial abuse of discretion.

As has been made patently clear, the trial court's ruling which permitted their attorney to withdraw on the eve of trial without sufficiently protecting plaintiffs' interests as mandated by law, the denial on January 22, 2002, of plaintiffs' request to extend the stay of proceedings and continue the trial date to permit them sufficient time to locate and hire an attorney, its refusal to enforce its own stay orders or rule on plaintiffs' request for sanctions against defendants for violation of the stay orders which permitted defendants to continue to conduct their discovery and mount their defense, the trial court's failure to even follow the guidelines set forth in the Superior Court's own policy toward continuances under the facts of this case, were grossly in error and constitute a **prejudicial abuse of discretion.** Plaintiffs simply want to avail themselves of their constitutional right to a hearing, which includes the right to be represented by counsel, a continuance of the trial date would have been of little consequence when balanced against

plaintiffs' constitutional right to due process under the facts and circumstances as set forth herein.

III.

TRIAL JUDGES SHOULD NOT BE WHOLLY INDIFFERENT TO IN PRO PER LITIGANTS LACK OF FORMAL LEGAL TRAINING

The superior courts ruling on Plaintiffs Motion Summary Judgments is holding the Plaintiffs to an unrealistic standard as involuntary pro per litigants, in the face of the fact that the Superior court allowed Plaintiffs attorney to withdraw on the eve of their trial, and would not change the trial date so that another attorney could step in. To hold Plaintiffs to this higher standard expecting them as involuntary Pro Per litigants to suddenly conduct multiple motion summary judgments and complex hearings on their own against six major law firms while simultaneously dealing with all the requirements and demands of preparing an appeal having never done any of this before in order to not loose the ability to prosecute their case and see justice brought to the wrongful death of their father is an unrealistic expectation on the court's part towards plaintiffs that I believe any fair minded person would conclude defeats and impedes the cause of substantial justice. However the Appellate Court in Gamet v. Blanchare takes up our cause. **In Gamet v. Blanchard (2001) 91 Cal App 4th 1276,** it states in pertinent part: Litigants who represent themselves are not entitled to special exemptions from the California rules of court or code of civil procedure,

However, **they are entitled to treatment equal to that of a represented party, ...which is not only important to serve the ends of justice but to maintain public confidence in the judicial system.** In the courts ruling regarding Motion Summary Judgments the court is not giving Plaintiffs any consideration regarding their *involuntary pro per status* but only holding them to the same standard of that of a law firm which is not, entitling them to treatment equal to that of a represented party, but acting wholly

indifferent to plaintiffs involuntary pro per status and lack of formal legal training. If Plaintiffs had a staff of attorneys working on their case they of course could have addressed the motion summary judgments, but since just one Plaintiff Renna Ostoposides had to handle a staff of attorneys duties by herself against six major law firms, having never done any of this before, it is completely unfair and unjust in the face of all the overwhelming duties and circumstances to expect these plaintiffs to have been able to address the motion summary judgments fairly as unrepresented involuntary pro per litigants.

The **Gamet, supra** case further addresses all this by stating, **Trial judges must acknowledge that propria persona litigants often do not have an attorneys level of knowledge about the legal system** and then further states, **trial judges should not be wholly indifferent to in pro per litigants lack of formal legal training. (RT 6/29/01 p. F-4, II. 3 and 4)**[6/] Plaintiffs feel their motion summary judgment rulings were not only indifferent to their lack of formal legal training, but completely indifferent to their involuntary pro per status, which all lead to a miscarriage of justice. The **Gamet** case goes on to further point out that **judges are charged with ascertaining the truth, not just playing referee.** Given the overwhelming truths about what happened to Plaintiffs Father in the hospital in comparison to all the lies in all the defendants motion summary judgments, it is clear that the Judge did not correctly ascertain the truth about their case. The **Gamet** case then goes onto state **when disposing of cases**

[6/] Judge Ramona See by here own admission in the reporters transcript citing **(RT 6/29/01 p. F-4, II. 3-4)** clearly spells out that as a trial judge she does not acknowledge that pro per litigants do not have an attorneys level of knowledge about the legal system and also proves to be entirely and wholly indifferent to in pro per status litigants lack of formal legal training by stating "I treat pro pers as I treat any attorney". Hence making no allowances for all the allowances in the **Gamet case supra** and clearly no allowances for involuntary pro per status either, which clearly was the status of the plaintiffs in this case.

becomes an end in itself, justice and fairness can easily be sacrificed. And that is exactly what has happened in the plaintiffs' case herein. Given all the facts, granting all motion summary judgments resulted in a manifest miscarriage of justice. Just as in the **Gamet** case **a series of abuse of discretions resulted in a denial of litigants' rights to due process.** So to it happened with Plaintiffs in their case. The courts unwillingness to change the trial date in the face of Plaintiffs telling them that no attorney will take the case unless the trial date is changed is an abuse of discretion, resulting in a denial of litigants' rights to due process. Forcing them into an involuntary pro per position with countless motion summary judgments and a mountain of discovery etc., to address against six major law firms, was an abuse of discretion resulting in a denial of litigants rights to due process. **Gamet** also expresses **The trial courts discretion is not absolute.... An exercise of discretion is subject to reversal on appeal where no reasonable bases for the action is shown.** Clearly there was no reasonable bases for the actions shown above except to give priority to the fast track system at the expense of disposing and sacrificing the justice and merits of the Plaintiffs case. **Gamet** states, **The fundamentals of due process extends to all legal persons and includes an opportunity to be heard.** This statement in **Gamet** is in keeping with the policy of the law, which is to favor, whenever possible a hearing on the merits.

A further abuse of discretion occurred by the trial court by allowing the six major law firms to conduct unlawful acts against Plaintiffs while they were trying to find an attorney by refusing to enforce their own stay order forcing plaintiffs to have to stop their search and use up alleged stay time to deal with all that was involved in trying to stop all these violations of stay orders. By the court refusing to intervene and stop the violations of the stay order it was not as **Gamet** case admonishes judges to do, **exercising its proper authority by ensuring that the pro per litigant receives the essence of equal and fair treatment.**

IV.
A LAWSUIT IS NOT A GAME WHERE THE PARTY WITH THE CLEVEREST LAWYER PREVAILS REGARDLESS OF THE MERITS

Adams v. Murakami (1991) 54 Cal.3d105, goes onto correctly state in pertinent part: **A lawsuit is not a game where the party with the cleverest lawyer prevails regardless of the merits.** And yet that is exactly what is going on in Plaintiffs case. Plaintiffs Father who went into the hospital for a broken toe was destroyed in front of their eyes because of the gross negligence of these doctors, which lead to his death. These same doctors have now employed Insurance company attorneys whose countless unlawful actions against plaintiffs' have been constantly brought to the courts attention, only to have the court grant these Attorneys their request instead of condemning their unlawful conduct. The ultimate result has been a miscarriage of justice, and the merits of the Plaintiffs case, thrown to the wayside. **Hence this lawsuit has become a game where the party with the slickest lawyers have prevailed, regardless of the merits of the case** and hence the admonishment of **Adams v. Murakami** to not let this happen, trampled under foot.

V.

THE JUDGE DID NOT EVEN ACKNOWLEDGE THAT PLAINTIFFS FILED OPPOSITIONS TO ALL DEFENDANTS MOTION SUMMARY JUDGMENTS, HENCE GRANTING ALL MOTION SUMMARY JUDGMENTS RESULTED IN A MANIFEST MISCARRIAGE OF JUSTICE AND ABUSE OF DISCRETION

At the April 18, 2002 motion summary judgment hearing Judge Romona See did not even acknowledge that Plaintiffs had filed their oppositions to defendants Motion for Summary Judgments. **(RT p. J-8 II. 23-28; RT p. J-9 II. 1-15) (CT p.1640, p.1647, p.1654; CT p.454, 455; CT. p.437).**

When Plaintiff Renna Ostoposides tried to point out to the Judge that there were oppositions filed that the court was evidently unaware of, the Judge simply stated that she saw one opposition and when Plaintiff Renna Ostoposides pointed out that there was more then one and that plaintiffs filed oppositions in regards to all motion summary judgments the Judge simply disregarded her attempts to rectify the situation, referred her to the court file and walked away. Hence she did not consider them in her ruling. This lead to a manifest miscarriage of justice for the plaintiffs and an abuse of discretion.

CONCLUSION

For all of the reasons stated herein all defendants motion summary judgments and adjudication orders and judgments should be reversed and Plaintiffs case sent back to trial court where they can have their case tried on the merits before a jury so they can see justice brought to the wrongful death of their Father. The Plaintiffs also request that this court grant Plaintiffs a sufficient amount of time before trial as their case is voluminous and they need the proper amount of time for an attorney to be able to adequately prepare it for trial.

Respectfully submitted,

Dated: December13, 2004

_____

Olga Ostoposides in Propria Persona

_____

Socrates Ostoposides in Propria Persona

_____

Renna Ostoposides in Propria Persona

_____

Harry Ostoposides in Propria Persona

CERTIFICATE OF COMPLIANCE

THIS PETITION IS IN COMPLIANCE WITH CALIFORNIA RULES OF COURT RULE 14(c) AND CONTAINS 14,000 WORDS OR LESS.

DATED: December 13, 2004 Respectfully submitted,

OLGA OSTOPOSIDES
Plaintiffs in Propria Persona

RENNA OSTOPOSIDES
Plaintiffs in Propria Persona

HARRY OSTOPOSIDES
Plaintiffs in Propria Persona

SOCRATES OSTOPOSIDES
Plaintiffs in Propria Persona

APPENDIX E

B16058

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

OLGA OSTOPOSIDES, RENNA OSTOPOSIDES,
HARRY OSTOPOSIDES, SOCRATES OSTOPOSIDES,
ESTATE OF JOHN OSTOPOSIDES
Plaintiffs and Appellants
vs.
RICHARD GLIMP, M.D., ET AL.
DEFENDANTS AND RESPONDENTS

APPEAL FROM THE SUPERIOR COURT
FOR LOS ANGELES COUNTY
CASE NO. YC39166
RAMONA SEE, JUDGE

PLAINTIFFS/APPELLANTS
MOTION FOR REHEARING

Olga Ostoposides, Renna Ostoposides,
Harry Ostoposides, Socrates Ostoposides
Plaintiffs and Appellants in Propria Persona
1407 Cota Avenue
Torrance, CA 90501 (310)782-1673

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INTRODUCTION

TO THE HONORABLE PRESIDING JUSTICES AND ASSOCIATE JUSTICES OF THE COURT OF APPEAL, SECOND APPELLATE DISTRICT:

Plaintiffs/Appellants Olga Ostoposides, Renna Ostoposides, Harry Ostoposides and Socrates Ostoposides move this Court for a Rehearing regarding the February 27, 2006 ruling of appeal B16058 on the grounds that this court's ruling is prejudicial and contains errors. Court's statement of facts of this case focused solely on the defendants' volitional misrepresentations of reality and completely disregarded the true statements of facts of this case as presented to this court by Appellants. This preference clearly inhibited the essential element of impartiality to manifest in order that justice could prevail, and because of this, justice did not. In addition to this, the court has made a number of errors in its ruling, which have led to an inaccurate representation of the truth of this case. This Motion is based on the attached Memorandum of Points and Authorities, the attached declaration, the attached exhibits, the court order, and upon all the pleadings and records in this case which Plaintiffs ask court to take judicial notice of as it relates to this Rehearing.

Dated: March 14, 2006 Respectfully submitted,

Olga Ostoposides In Pro Per	Socrates Ostoposides In Pro Per
Renna Ostoposides In Pro Per	Harry Ostoposides In Pro Per

MEMORANDUM OF POINTS AND AUTHORITIES

BACKGROUND

A. The Underlying Medical Treatment of Decedent

The court's ruling states on page 2: *"Decedent had a history of severe coronary disease, including congestive heart failure, failed coronary artery angioplasty and bypass surgery, as well as hypertension"*. Contrary to defendants' constant volitional misrepresentations of facts to this court in their respondent briefs, on page 8 of Schmid & Voiles' respondent brief, they falsely state John Ostoposides had a history of severe cardiac disease. John Ostoposides did not have a history of severe cardiac disease, but as revealed in the medical records, John Ostoposides had no acute cardiac condition as he entered Torrance Memorial Medical Center on June 8, 1999, but upon being transferred to Little Company of Mary Hospital on July 26, 1999, it is revealed that now after all the damage caused by the treating physicians at Torrance Memorial Medical Center, John Ostoposides had severe heart damage as his heart, which was in no acute cardiac condition on June 8, 1999, was now clearly an acute cardiac condition as he entered Little Company of Mary hospital. Dr. Robert Grossman, a Board-certified cardiologist, conducted examinations and tests on John Ostoposides on June 8, 1999, when he entered Torrance Memorial Medical Center. He found no acute cardiac condition which required further cardiac care. (CT 5 913:22-24). It was only after the disastrous results of gross negligence caused by his treating physicians at Torrance Memorial Medical Center that John Ostoposides' heart was now in an acute heart condition. As Plaintiffs pointed out in their introduction in their Opening Brief, their father was in no way concerned about his heart when he entered Torrance Memorial Medical Center on June 8, 1999, and the medical records clearly reflect that. Though he had a ten-year history of congestive heart failure, his heart was functioning fine, as the medical records reflect.

Review of Systems: Except for the left foot pain, the only other significant complaint that the patient has is leg swelling, which he notes to be chronic. The patient denies chest pain, abdominal pain or shortness of breath. He has no fever. The remainder of the review of systems is negative.

The patient has been evaluated here with screening laboratory studies which remarkably show completely normal chem-20 panel and a normal white blood cell count and CBC.

Summary: He is admitted with left foot pain swelling and has evidence of cellulites fracture and possible osteomyelitis.

General Appearance: That of a well-developed loquacious (very talkative) white male in no acute distress. Nurse documentation *"Talkative"* (App., 28a) (CT 3 460:20-24).

Dr. Grossman, in his own words, states, after conducting examinations and tests:

> **I determined there was no acute cardiac condition and no further cardiac care required. (CT 5 p. 913:22-24).**

The court's ruling erroneously stated decedent broke his foot in March of 1999. Decedent John Ostoposides did not break his foot in March of 1999 but in February of 1999. The court then correctly states that John Ostoposides, three months later, on June 8, 1999, arrived at Torrance Memorial Medical Center emergency room. However, in addition, John Ostoposides was admitted to the hospital with not only a swollen, tender foot, as

court writes, but it is also still fractured, which the court did not acknowledge. In respondent Dr. Jerome Unatin's statement of the case, he testifies to this court that he diagnosed John Ostoposides with a fracture of the fifth metatarsal in March of 1999, which he then claims was already **Healed** by May 26, 1999, claiming this to be the last time he saw decedent at his office. (CT 5 1001:20-26) However, the medical evidence proves that Dr. Jerome Unatin is falsely and intentionally misleading this court when he professes these facts as truths to this court.

On June 8, 1999, when decedent John Ostoposides was admitted to Torrance Memorial Medical Center, contrary to Dr. Jerome Unatin's testimony that John Ostoposides' fracture had healed, the medical records show that not only was his fracture not healed but developed into a very serious and severe bone infection called osteomyelitis. The real facts of the matter were presented in Appellants' Opening Brief, where they revealed to this court that in February of 1999, John Ostoposides fell and fractured his left foot. Dr. Jerome H. Unatin was the orthopedic surgeon who treated John Ostoposides for approximately three months for the fracture. Toward the end of those three months, Plaintiffs' father was still complaining of constant pain and swelling in his left leg. Dr. Jerome Unatin assured John Ostoposides that his fracture had healed, and his solution for the pain was to send John Ostoposides to physical therapy. Realizing that something was very wrong with this diagnosis because her father could hardly walk, Plaintiff Renna Ostoposides took her father to the emergency room at Torrance Memorial Medical Center on June 8, 1999. The emergency room doctors informed Plaintiffs that John Ostoposides' fracture **had not healed, as Dr. Jerome Unatin had assured John Ostoposides that it had**, and that the fracture had become infected, causing him to have a condition known as osteomyelitis. The emergency room doctors told John Ostoposides that he needed to stay in the hospital for six weeks of treatment because this was a serious infection of the bone.

It was later confirmed on an x-ray that John Ostoposides had broken his fifth metatarsal. Medical records state:

> **X-ray Impression: Fracture of his fifth metatarsal, perhaps with only minimal changes of healing since 2/6/99[1]. (SCT 1 118:25-26) (CT 3 461:8-10) (App., 27a)**

Dr. Jerome Unatin never came to the hospital to follow up on John Ostoposides' care. John Ostoposides was admitted to the hospital as a direct result of Dr. Jerome Unatin's gross negligence which contributed to the ultimate demise and death of decedent John Ostoposides (CT 3 460-61:27, 1, 2), contrary to Dr. Jerome Unatin's profession of innocence in his opposition to this court that: *"I committed no act or omission in violation of the standard of care that caused any harm or damage to decedent. Further, it is my opinion that no act or omission on my part caused or contributed to decedent's death."* (CT 5 1002:9-12)

These proven facts of evidence clearly document that Dr. Jerome Unatin is not being truthful and has misrepresented intentionally under penalty of perjury the facts of this case to this court in an effort to cover up the real truth of his negligence that severely contributed to decedent John Ostoposides' death. Clearly, his statements have been shown to be both false and intentionally misleading in the face of the evidence presented in the medical records. This statement of fact that this defendant Dr. Jerome Unatin seeks to propound on this court in his opposition is, thus, verifiably false, and hence a known and intentional misrepresentation on his part to this court. (CT 5 1001:1-28, 1002:1-17)

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[1] Note: Date of x-ray proves March 1999 was not when John Ostoposides broke his foot, but February 6, 1999, was the date of the x-ray impression of the fracture of his fifth metatarsal, with only minimal changes of healing.

The court then fails to acknowledge that although Dr. Grossman and the medical records clearly testified that he determined no acute cardiac condition and no further cardiac care was required for John Ostoposides, the medical records clearly state that he placed John Ostoposides on 40 mg of Lasix. Plaintiffs' father, John Ostoposides, should have been put on 240 mg of Lasix, as John Ostoposides clearly told the doctors was his normal dosage.

> **Medical Administration Record 6/8/99: Lasix, 40 mg daily p.o.**
>
> **Then, in the medical records it states: Patient states was on 240 mg of Lasix b.i.d. at home. (App., 28a) (CT 3 461:15-19)**

Dr. Robert Grossman's other intentional omission in his statement of facts is that during the time when my father was in congestive heart failure, he had him on a drug called Betapace, a drug that the medical journals clearly state should not be administered to patients in congestive heart failure. (App., 29a-30a) (CT 3 462:9-10)

These proven facts of evidence clearly document that Dr. Robert Grossman is not being truthful and has misrepresented intentionally under penalty of perjury the facts of this case to this court in an effort to cover up the real truth of his negligence, which contributed to the death of John Ostoposides. He clearly states:

> **I committed no act or omission in violation of the standard of care that caused any harm or damage to decedent. Further, it is my opinion that no act or omission on my part caused or contributed to the decedent's death. (CT 5 913:6-9)**

Clearly, this statement has been shown to be both false and intentionally misleading in the face of the evidence presented in the medical records. This statement of fact that this defendant Robert Grossman seeks to propound on this court in his opposition is, thus, verifiably false and hence a known and intentional misrepresentation on his part to this court. The court's ruling on App., 3a then states: *"He, John Ostoposides, was treated for osteomyelitis, a bone infection. During the next three weeks of hospitalization, decedent refused to wear special hosiery or keep his legs elevated to combat edema."*

As is revealed in the medical records in the first three weeks and beyond, John Ostoposides was only given 40 mg of Lasix per day, when he should have been placed on 240 mg per day.

> **Upon admission to Torrance Memorial Hospital, John Ostoposides was not prescribed adequate amounts of diuretic medication used to prevent water retention and congestive heart failure. Diuretics remove fluids from the body. It was reported to me (Dr. Ed Woerz) that John Ostoposides was on 240 mg per day. Upon admission, he was only prescribed 40 mg per day. (CT 3 461:15-19)**

Upon admission, John Ostoposides had only one swollen foot, his left lower extremity. This was reported in the medical records by his treating physicians. Within a few short days, by June 12, 1999, the nurses were reporting bilateral edema (swelling in both feet). Additionally, his laboratory levels began to rise (BUN/CREAT). (CT 3 461:21-27) Despite repeated requests by the family and the patient, the physicians treating John Ostoposides failed to give him adequate amounts of diuretics (CT 3 461:26-27), leaving him abandoned while John Ostoposides was in full-blown congestive heart failure. These defendant doctors further point out their gross negligence of **misdiagnosis** and not responding to the life-

threatening situation of John Ostoposides by stating in their opposition, "*decedent refused to wear TED hose or keep his legs elevated*". (RB Schmid & Voiles p. 7). Not only were these doctors not correctly diagnosing John Ostoposides' congestive heart failure at this point, but they were grossly misdiagnosing it. They were denying it existed. They were not correctly diagnosing that his edema was coming from his congestive heart failure and wrongly prescribed **TED hose** for a man whose legs and entire body were exploding under the pressure of massive water buildup that was accumulating throughout his entire body on a moment-by-moment basis. He did not need TED hose to combat his edema. He needed his correct dosage of 240 mg of Lasix. TED hose would have added more intense, explosive pressure to an already out-of-control situation, and my father, John Ostoposides, absolutely knew it.

John Ostoposides did not need TED hose or elevation. He needed for his doctors to respond to his life-threatening condition of not being placed on his proper dosage of 240 mg of Lasix medication, which was causing his body to blow up like a balloon. This behavior of gross negligence by his healthcare providers is what thwarted John Ostoposides' life from being saved and what led to the ultimate death and demise of our father.

The court then states on App., 3a of its ruling that he was being treated for osteomyelitis, the bone infection (by Dr. Richard Glimp). The next statement of facts presented in respondent's opposition by Richard Glimp also contains intentional misrepresentations by this defendant to this court, as well. In his declaration, respondent Dr. Richard Glimp intentionally misleads this court to believe that he did nothing wrong. However, the evidence shows a pattern of false and intentional acts of misrepresentation by Dr. Richard Glimp in order to cover up the real truth of this matter, as is evidenced in the medical records. Dr. Richard Glimp, in his declaration, clearly testifies that he

reviewed the medical records of John Ostoposides and states that he did nothing wrong. (CT 4 857:13) However, the evidence in the medical records exposes that his acts of negligence clearly severely contributed to John Ostoposides' death.

Dr. Richard Glimp testifies in his declaration that the decedent John Ostoposides had swelling in his lower extremities and edema when he arrived at Torrance Memorial Medical Center on June 8, 1999 (CT 4 857:19-20), falsely trying to indicate that John Ostoposides had swelling and edema in both his legs when he entered Torrance Memorial Medical Center. However, the medical records clearly prove that John Ostoposides did not have swelling in both his legs, but only in his left leg.

> **Medical records: Extremities: The left lower extremity has a 2 + leg and ankle edema with some slight hyperemia to the distal leg and foot, <u>THE RIGHT LOWER EXTREMITY SHOWS *NO* EDEMA</u>.**

This is further evidenced by Dr. Ed Woerz:

> **Upon admission, John Ostoposides had one swollen foot, his left lower extremity. This is reported in the medical records by his treating physicians. (CT 461:21-22)**

However, due to Dr. Richard Glimp's negligence of not responding to the cries of John Ostoposides to be put on his correct dosage of Lasix medication during his hospitalization while under the care of Dr. Richard Glimp, **both of John Ostoposides' lower extremities, as well as his entire body, did blow up to a 5 level + edema, which caused him to go into congestive heart failure.**

> This patient had 4 + edema bilaterally (now in both legs). He was in apparent congestive heart failure. (CT 3 462:12-13)

However, as the medical records clearly evidence, when John Ostoposides first entered the hospital on June 8, 1999, he was not in congestive heart failure. He only had swelling in his left leg due to the osteomyelitis (bone infection), not congestive heart failure **and not any edema in his right leg at all or any other part of his body**, because, as is verified in the medical records, John Ostoposides was not in congestive heart failure when he entered the hospital on June 8, 1999. (CT 3 461:8, 21-22)

Dr. Richard Glimp then falsely testifies to this court that there was no breach of duty and no negligence on his part towards John Ostoposides. (CT 4 855:12-17) The full truth of the matter is that under Dr. Richard Glimp's treatment, disastrous results ensued during his care that led to the ultimate death and demise of our father. Dr. Richard Glimp, in his declaration to this court, states: **I provided appropriate medical care of osteomyelitis. I was following Mr. Ostoposides in the hospital until I was dismissed by the family from the case. As of the last time I saw Mr. Ostoposides, his bone infection was healed.** (CT 4 857:20-24)

Dr. Richard Glimp falsely testifies to this court when he says: **As of the last time I saw Mr. Ostoposides his bone infection was healed.**[2] Dr. Richard Glimp was dismissed by the family just prior to John Ostoposides being transferred to Little Company of

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[2] My father's osteomyelitis was not getting better under Dr. Richard Glimp's care, but worse. He was admitted June 8, 1999, for the bone infection. On July 6, 1999, after four weeks (almost a full month) of what was supposed to be a six-week treatment by Dr. Richard Glimp, an x-ray of John Ostoposides' left foot taken on July 6, 1999, clearly confirmed that John Ostoposides' osteomyelitis (bone infection) was not getting better, but spreading to other bones. (CT 3 461:12-13)

Mary hospital. After Dr. Richard Glimp was dismissed by the family, John Ostoposides was transferred to Little Company of Mary hospital on July 26, 1999. (CT 3 463:1-2) The discharge and transfer diagnoses clearly read **osteomyelitis** as one of the conditions John Ostoposides still had as he was transferred and entered Little Company of Mary hospital (CT 3 463:2), making Dr. Richard Glimp's sworn testimony to this court that *"as of the last time I saw Mr. Ostoposides, his bone infection was healed"* false and intentionally misleading.[3]

As has been documented in Appellants' Opening Brief, though John Ostoposides' regular dosage of Lasix was 240 mg, he was placed on 40 mg at Torrance Memorial Medical Center. (App., 28a) Dr. Ed Woerz also verifies this from the medical records:

> **However, upon admission to Torrance Memorial Hospital, John Ostoposides was not prescribed adequate amounts of diuretic medications used to prevent water retention and congestive heart failure. Diuretics remove**

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[3] On page 4 of respondent's opposition, attorney, Suzanne De Rosa, contradicts Dr. Richard Glimp's own testimony in his declaration when he states that "I provided appropriate medical care for osteomyelitis." (CT 4 857:20-21) Suzanne De Rosa states "Dr. Glimp's impression was cellulitis, ruled out osteomyelitis." However, as the medical records verified, Dr. Richard Glimp was treating and diagnosed John Ostoposides to have osteomyelitis (bone infection) (CT 3 461:8), intentionally trying to distort the real facts of the case. Attorney Suzanne De Rosa further contradicts herself on page 4 of respondent's brief when she writes, "The bone infection had healed the last time Dr. Richard Glimp saw decedent during his hospitalization at Torrance Memorial Medical Center." Then, on page 8 of her opposition, she directs this court to the discharge and transfer diagnosis, where it proves that John Ostoposides' osteomyelitis was not healed, as Dr. Richard Glimp testifies to this court, as the discharge and transfer diagnoses clearly state osteomyelitis as one of the conditions John Ostoposides still had when he was transferred to Little Company of Mary hospital. (RB Schmid & Voiles p. 8)

> **fluids from the body. It was reported to me that John Ostoposides was on 240 mg per day. Upon admission, he was only prescribed 40 mg per day. (CT 3 461:15-19)**

Although Plaintiff Renna Ostoposides called Dr. Richard Glimp several times to put her father on his correct dosage of Lasix, each time he said he would, but he never did. (App., 28a)

> **Despite repeated requests by the family and patient, the physicians treating John Ostoposides failed to give him the adequate amounts of diuretics. (CT 3 461:26-28)**

Dr. Richard Glimp's negligence of not properly listening to the family and his patient's constant cries to be placed on his right dosage of Lasix medication caused disastrous results.[4] John Ostoposides' entire body blew up to a 5 level + edema and sent him into congestive heart failure, which caused him to go into an acute cardiac condition. (CT 3 462:12-13)

Because of the negligence of not putting him on his correct dose of Lasix, my father's BUN (kidney reading), which was essentially normal when he entered Torrance Memorial Medical Center was now soaring through the roof at 100:

> **As is reported in the medical records, on or about July 17, 1999, John Ostoposides' BUN**

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[4] This clearly proves Dr. Richard Glimp's statement and his declaration are intentionally false and misleading when he states, "I appropriately provided care and treatment to Mr. Ostoposides, prescribed appropriate medication and appropriately attended to his medical condition." (CT 4 858:1-3) Dr. Richard Glimp **notes in his records his disbelief** of the patient's (John Ostoposides) statement of Lasix prescription and administration. (CT 3 462:2-4)

was 100, almost five times normal limits. (CT 3 462:16-17)

As is further evidenced in the medical records, it was at normal levels when he entered Torrance Memorial Medical Center.

Medical records 6/8/99: The patient has been evaluated here with screening laboratory studies, which remarkably show completely normal chem-20 panel and a normal white blood cell count and CBC. His vital signs and routine laboratory findings were essentially within normal limits. At the time of his presentation, all other medical conditions John Ostoposides were under control (stable). (App., 27a-28a) (CT 3 460:22-24)

Hence, in addition to causing an acute heart condition, Dr. Glimp put my father into acute renal failure, which is verified in the medical records as one of the medical conditions he was now suffering from as a direct result of Dr. Richard Glimp's negligence.

Discharge summary: Acute renal failure. (CT 3 462:16-17) (App., 31a) (RB Schmid & Voiles p. 8)

Despite this evidence, Dr. Richard Glimp tried to minimize the situation and told Plaintiff Renna Ostoposides, that he would have the water in John Ostoposides' entire body down in two days. Daughter, Renna Ostoposides, saw that her father had a 4 level + edema and knew that that level of water that had been allowed to accumulate in her father's body was massive and would take weeks to properly eliminate. Dr. Richard Glimp then began to attempt to reverse the damage he had done, along with the other physicians, and together they caused dehydration to our father,

whose mental status changed from being loquacious and talkative when he entered Torrance Memorial Medical Center on 6/8/99 to irritable, disoriented, dizzy and severely mentally confused, as is evidenced in the medical records:

> **Discharge summary report: Severe mental confusion.**

Our father never regained his full mental status. (CT 3 462:19-20, 24-25) (App., 31a)

Although Dr. Richard Glimp states that he treated John Ostoposides until he was dismissed by the family, he never explains why. This is the why. Even after family members left specific instructions that Dr. Richard Glimp was not to come near John Ostoposides or his family anymore after he was dismissed, he volitionally chose to ignore those instructions and not only came to see Mr. Ostoposides on the day he was transferred to Little Company of Mary hospital at Torrance Memorial Medical Center but was found lurking outside John Ostoposides' room at Little Company of Mary hospital when John Ostoposides and his family arrived at Little Company of Mary hospital.

The family immediately contacted the hospital administration and left specific instructions for all nurses and doctors and hospital personnel that Dr. Richard Glimp was not to come near John Ostoposides or his family.

Hence, due to Dr. Richard Glimp's breach of duty and abandonment of John Ostoposides, our father suffered acute heart damage, brain damage, renal and kidney damage, as a direct result of Dr. Richard Glimp's negligence, which severely contributed to our father's death.

These proven facts of evidence clearly document that Dr. Richard Glimp is not being truthful and has misrepresented intentionally under penalty of perjury the facts of this case to this court in an

effort to cover up the real truth of decedent John Ostoposides' death. He clearly states:

> **I committed no act of omission in violation of the standard of care that caused any harm or damage to decedent. Further, it is my opinion that no act or omission on my part caused or contributed to John Ostoposides' death. (CT 4 858:4-8)**

Clearly, this statement has been shown to be both false and intentionally misleading in the face of the evidence presented in the medical records. This statement of fact that this defendant Richard Glimp seeks to propound on this court in his Motion Summary Judgment in his opposition is thus verifiably false and hence a known and intentional misrepresentation on his part to this court. Hence, he volitionally commits fraud and perjures himself to this court. (CT 4 857-58)

The court then states in its ruling on App., 3a on July 19, 1999: *"The edema had resolved, but he appeared disoriented and confused. It was believed that he had azotemia and confusion secondary to low potassium, age and cerebral atrophy."* The court takes this account from page 7 of defendant Schmid & Voiles respondent's brief, which actually states: *"By July 19, 1999, decedent's edema had resolved. There were no clinical indications of osteomyelitis. However, decedent was disoriented and confused. It was* ***thought*** *he had azotemia, pre-renal and confusion secondary to low potassium, age and cerebral atrophy. Discharge plans, were nonetheless initiated* ***due to decedent's overall improving condition.***" (SCT 1 119:4-7)

On July 19, 1999, in the face of this nightmare holocaust that John Ostoposides was facing: now being brain damaged by Dr. Richard Glimp and his fellow physicians, acute kidney and renal failure; still having osteomyelitis; and now acute heart condition, as his

heart that was in no acute distress when he entered the hospital was now in acute distress. On July 19, 1999, Dr. Richard Glimp and his colleagues called this holocaust an overall improving condition and tried to discharge John Ostoposides while he was suffering from this nightmare caused by Dr. Richard Glimp and his fellow physicians to get rid of him in order to cover up their criminal gross negligence. Had I, Plaintiff Renna Ostoposides not been there to intervene and take him out of these murderers' hands, my father's real condition would never have been acknowledged, and he never would have been transferred to Little Company of Mary hospital for further care. Hence, calling my father's condition an *"overall improving condition"* in the face of his holocaust was a criminally callous act.

The court then erroneously states on App., 3a: *"Decedent began refusing to eat on July 21, 1999."* In addition to the nightmare holocaust of negligence that our father, John Ostoposides, was suffering, now having acute cardiac condition and acute kidney and renal failure, as well as severe brain damage, all due to the gross negligence of each of Dr. Richard Glimp and his fellow physicians, these doctors were also starving our father to death by not giving him a feeding tube, as our father was unable to eat due to all the gross negligence that was happening to him. In spite of our family's constant cries of begging his doctors to insert a feeding tube, they **never** did. On June 23, 1999, John Ostoposides had gained 11 pounds **but had been failing to eat or drink.**[5] (CT 3 462:1, 2)

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[5] The 11 pounds that our father gained was water from his congestive heart failure. His body was building up massive water as he had not been on his correct 240 mg dosage of Lasix since June 9, 1999, at this point, but only on 40 mg a day, which was proven to be fatal in controlling his congestive heart failure, as our father ultimately gained at least 36 pounds of water as a result of not being on his correct dosage of Lasix that would have controlled his water levels.

> **Despite the family's pleas to physicians and nurses' suggestions, the patient was not offered a NG-tube for feeding. (They starved the patient. He was not eating or drinking.) (CT 3 462:15-16) (CT 3 462:6, 7)**

This clearly proves defendant's statement to this court that on July 21, 1999, *"decedent began to refuse meals"*, is false and intentionally misleading in order to try and deceive this court regarding the true facts of this case, and hence an intentional act of criminal fraud on defendants' and their attorneys' part to this court. Our father never refused anything. Well before July 21, 1999, our father was unable to eat due to all the overwhelming gross negligence that was happening to him and was never given a feeding tube up to the day he died on August 20, 1999. Abominable, deplorable and inhumane.

I, Plaintiff Renna Ostoposides had been calling the office of the defendant Dr. Ed Piken the decedent's gastroenterologist, early right away in June 1999 asking him to come to the hospital due to my father's nutritional situation. Dr. Ed Piken never responded to my calls, and it was only after I had finally spoken to Dr. Marina Raikhel, who then called Dr. Ed Piken, that Dr. Ed Piken's office responded (having now been contacted by Dr. Marina Raikhel), after disastrous results had ensued, by sending Dr. Howard Resin, who still, in the face of the evidence that John Ostoposides had not been eating since early June **refused** to provide John Ostoposides with a feeding tube, which proves that defendants intentionally are misrepresenting the truth when they try to falsely profess that on July 22, Dr. Resin noted that decedent's intake levels had diminished over the **past two weeks** and that decedent was eating very little, when it is clearly evidenced in the medical records that John Ostoposides had stopped eating well before July 22 in early June, as on **June 23**, John Ostoposides had gained 11 pounds **but had been failing to eat or drink**. (CT 3 462:1-2) Though

placement of a gastronomy tube was discussed, as defendants state, the doctors, Howard Resin and Ed Piken, **refused** to ever insert one, starving our father to death:

> **Despite the family's pleas to physicians and nurses' suggestions, the patient was not offered a NG-tube for feeding. (They starved the patient. He was not eating or drinking.) (CT 3 462:15-16)**

Yes, as the court's ruling then states on App., 3a, on July 26, 1999, John Ostoposides was transferred to Little Company of Mary hospital with a diagnosis of dehydration, congestive heart failure, acute renal failure and severe mental confusion, all symptoms John Ostoposides was free and clear of when he entered Torrance Memorial Medical Center for a broken toe (and, yes, still osteomyelitis).

The court then states on App., 3a on August 1, 1999: *"He was agitated and refused all medications and meals. For the next two days, he refused medical treatment."*

Decedent John Ostoposides as it is evidenced in the medical records, fully cooperated with cardiologist, Dr. Grossman when first admitted to Torrance Memorial Medical Center on June 8, 1999, allowing him to conduct full examinations and all tests necessary to assess his cardiac condition and care. Defendants and their attorneys would have you believe that John Ostoposides—a man who was pleading with doctors at Torrance Memorial Medical Center to provide the proper cardiac care for him is now being quoted as refusing the very cardiac care he was begging for at Torrance Memorial Medical Center before his brain damage.

They have a man who was unable to eat whose intake levels had diminished over at Torrance Memorial Medical Center, verified by defendant Dr. Resin and in clear need of an NG feeding tube, a

man who was pleading with doctors at Torrance Memorial Medical Center to give him his medications, now allegedly refusing both.

The court then writes in its ruling: *"Decedent's family requested that he be discharged against medical advice on August 3, 1999."* However, this contradicts Dr. Mark Lurie's own testimony of John Ostoposides' August 3, 1999, discharge, in his Motion for Summary Judgment by Susy Peng, who states:

> **On August 3, 1999, the patient was appropriately discharged by Dr. Lurie. At the time, his cardiac and kidney functions were stable, and his fluid status was balanced. He was placed on the appropriate discharge medication. He was properly instructed to follow up with Dr. Lurie for his cardiac care.**

The court erroneously reports in its ruling, App., 3a: *"Four days later, decedent was readmitted to Little Company of Mary hospital with generalized weakness, diffuse abdominal pain, and a recent history of passing blood through his rectum."* The actual account is:

> **On August 8, 1999, John Ostoposides presented to Little Company of Mary hospital emergency room with complaints of abdominal pain. The bowel movements in the morning at home on August 8, 1999, were reported as having some red color to them. The emergency room physician noted to see some black tarry stool on his rectum. There was no evidence in the emergency room of any active "bleeding". (CT 3 463:6-10)**

The court's ruling then states he was diagnosed with gastrointestinal bleeding. The actual medical records report that:

> **Review of patient's history and emergency room doctor's findings, showed NO EVIDENCE OF MASSIVE BLEEDING. His pulse never exceeded 100 and blood pressure was essentially stable. (CT 3 463:12-14)**

The court then states an emergency endoscopy revealed a massive ulceration on the intestinal wall. The actual medical records reveal that there was **no massive** ulceration on the intestinal wall:

> **The pathology report on gross examination evidenced that ulcerations were NOT GROSSLY IDENTIFIED. (CT 3 463:25-26) There was NO MASSIVE ulceration on John Ostoposides' intestinal wall. (CT 3 463:25-26)**

Dr. Michael Peters had **no reason** to take John Ostoposides to surgery.

> **It is my opinion based upon my review of the medical records, that Dr. Peters failed to provide proper care and treatment in that SURGERY WAS NOT INDICATED on August 8, 1999, and he failed to recognize postoperative complications (Dr. Ed Woerz). (CT 3 464:19-20)**

> **The patient underwent emergency endoscopy with consent for homeostasis (to control bleeding). No active bleeding was found. The patient was on coumadin (blood thinner). A prothrombin test should have been ordered. Any bleeding could have been as a result of the blood thinner. This test was apparently not ordered at that time. The patient was referred to a surgeon as opposed to a trial of medical**

treatment. The standard of care required medical treatment for the first 48 hours prior to surgery, unless re-bleeding of significance was noted.

The patient was taken to surgery on June 8, 1999 (4 hours after admission), and a hemigastrectomy (30-50% of stomach removed) was performed on an emergent basis. Again, no active bleeding was noted. The pathology report on gross examination evidenced that ulcerations were not grossly identified.

Throughout his course, it appeared he only received a total of two units of blood and one unit of plasma. The patient's hematocrit (indication of blood loss) since discharge on August 4, 1999,, did not change significantly. SURGERY WAS NOT INDICATED for this patient. (CT 3 463:17-26, 464:1-3)

On August 20, 1999, as reported by his family in their Appellants' Opening Brief, and as evidenced by the medical records, our father, John Ostoposides, unable to keep up with the negligence of his caretakers, died.

DISCUSSION

1. APPLICATION TO WITHDRAW AS COUNSEL

A. Background

B. Discussion

There are a number of inaccurate accounts in the ruling of the court under Discussion, 1. Application to Withdraw as Counsel, B. Discussion.

The court's statement in its ruling on App., 6a states: *"In her declaration, Renna did not dispute Moyer's statements regarding their relationship."* This is an incorrect statement. In her declaration, Renna Ostoposides, **Did**[6] dispute attorney Moyer's statements regarding their relationship, as is evidenced in her declaration when she writes:

> **Attorney Moyer's statement in her Supporting Declaration that I "fired her" and that is why she is bringing the motion is untrue. Whenever I would ask questions of Attorney Moyer concerning my case or give her my thoughts concerning the case, she would tell me she didn't want the case. This seemed to be happening on a consistent basis for one reason or another. In response to her constant complaining about not wanting the case, I did say to her out of frustration that if she didn't want the case then don't take it. Seeing an opening to escape her contract, she immediately requested that I sign a substitution of attorney. What is important to note, and as an example of the constant misrepresentations made by Attorney Moyer, we had resolved the problem of the alleged "firing" episode well in advance of her bringing the instant Motion to Be Removed As Counsel. She had agreed to, and did in fact, continue to represent us since that episode.**

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[6] It should be noted that the clerk's transcript (CT 6 1186) is missing page 10 of plaintiff, Renna Ostoposides' declaration. However, this page is in writ of mandate under Exhibit No. 5, volume 1 of 3.

> **Attorney Moyer also cites as the reason for seeking to withdraw is that I failed to sign my deposition transcript; that I contend that the transcript has been altered and that defendants are committing fraud against me. Without disclosing privileged information concerning that discussion, suffice it to say that I merely related to Attorney Moyer that some of the testimony in my deposition was incorrect and asked her what to do. She instructed me to "just sign it". I had problems with that since I believed that since the deposition was taken under the penalty of perjury, if I did not contest the testimony, I would be waiving any defects. Again, and without any further communication with me or my family whatsoever, Attorney Moyer *immediately* brought the instant Motion attempting to get out of the case. (Writ Exhibit 5, volume 1 of 3, page 42.)**

The court then states on App., 7a of its ruling: *"Contrary to Appellants' contention, Moyer did not "abandon them"*. She propounded and responded to discovery, met with experts, and took defendants' depositions **Before** Renna fired her.

As was stated in Renna Ostoposides' declaration:

> **What is important to note as an example of the constant misrepresentations made by Attorney Moyer, we had resolved the problem of the alleged firing episode well in advance of her bringing the instant motion to be relieved as counsel. <u>She had agreed to and did in fact continue to represent us since that episode.</u>**

Contrary to the court's ruling on App., 7a, attorney, Lynn Moyer, did not propound discovery, meet with experts and take defendant's deposition **Before** Renna allegedly fired her, but **After** the alleged incident. The proof of this-statement is that on September 4, 2001, Lynn Moyer conducted a mediation for Plaintiffs. On September 17, 2001, she met with expert Dr. Ed Woerz (she only met with one expert) and prepared an opposition to Plaintiffs' Motion for Summary Judgment of defendant Dr. Lurie. On September 6, 2001, she took Dr. Marina Raikhel's deposition; on September 6, 2001, she took Dr. Frank An's deposition; and was also ready to take the scheduled depositions of Dr. Richard Glimp and Dr. Grossman on September 7, 2001; Dr. Jerome Unatin and Dr. Michael Peters on September 10, 2001, had these doctors not canceled their depositions on us. As is evidenced, all these dates fall well **After** the alleged firing incident of August 29, 2001, and well **After** the alleged refusing of Plaintiffs to sign a substation on August 31, 2001. Why would anyone who alleges to have been fired continue to meet with experts, attend mediations, take defendant's depositions, etc., for their clients, unless, as the Plaintiffs truthfully represented to this court, the incident was resolved? Attorney, Lynn Moyer, clearly continued to work for Plaintiffs well after August 29, 2001, because, as Plaintiffs clearly stated in their opposition to her Motion:

> **What is important to note, and as an example of the constant misrepresentations by Attorney Moyer, we had resolved the problem of the alleged "firing" episode well in advance of her bringing the instant motion to be relieved as counsel. She had agreed to and did in fact continue to represent us since that episode. (Writ Exhibit 5, page 43, lines 9-13.)**

Another example of the misrepresentations Attorney Moyer made to the court was in her September 17, 2001, ex parte application for an order shortening time to be relieved as attorney of record, as well as her September 24, 2001, Motion to be relieved as counsel. In Attorney Moyer's declaration under number 9, she writes: *"Because of the fear of any prejudice to Plaintiffs' case, I requested Plaintiff sign a consent (substitution of attorney) in this matter. This request has been refused."* (SCT 2 387:25-27)

The request was not refused on August 31, 2001, but **Resolved**, and **Never** re-requested again after that date. As Attorney Moyer is falsely portraying to the court happened before she filed her September 17, 2001, Ex Parte Motion to be Relieved as Counsel. In her Motion, she is falsely portraying that she asked the Plaintiffs to sign a substitution of attorney before bringing her Motion to the court for fear of any prejudice to the Plaintiffs' case, and that is verifiably false. Without any notice to the Plaintiffs or request of them to sign a substitution, Lynn Moyer brought her Motion to the court on September 17, 2001. Hence, in her Ex Parte Motion and Motion to be Relieved as Counsel, she presents to the court her August 31, 2001, letter to Plaintiffs contending that she had been fired, and hence sought a substitution of attorney without exposing to the court that the incident had been **Resolved**, and she then continued on as counsel, taking depositions, etc. In her September 17, 2001, Motion, she is writing to the court as if August 31, 2001, is where she last left off with Plaintiffs, clearly misleading and deceiving the court in her Motion about the real facts of this matter. (SCT 2 388:20-22)

On App., 6a, the court ruling then states: *"Moyer filed a reply stating she could not ethically continue representing Appellants and offering to discuss the details of her reasons for withdrawing during an in-camera proceeding."*

This is another example of the constant misrepresentations made by Attorney Moyer. Here is what Lynn Moyer was trying to avoid

by fraudulently making this statement: Lynn Moyer knew her withdrawal from the case was voluntary on her part, because, as she stated to Plaintiff Renna Ostoposides over and over again, as is evidenced in their opposition to Attorney Moyer's Motion to Withdraw: *"I don't like this case. I want to get out of this case."*[7] Knowing, under **Estate of Falco, 188 Cal.App.3d 1004, 233 Cal.Rptr. 807 (1987):**

> **An attorney who withdraws Voluntarily without cause forfeits recovery for services performed. Estate of Falco. (CT 6 1192:26-1193:2)**

Knowing she would forfeit her recovery for services performed if she voluntarily withdrew, unless she could establish a mandatory withdraw, Lynn Moyer stooped to the level of criminal negligence by criminally and fraudulently lying under penalty of perjury and under the oath of being an attorney when she falsely stated in her reply: *"The undersigned counsel is in a position that prevents her from ethically proceeding with this case, as provided for under the mandates of withdrawal provisions of the rules of professional conduct."* I, Renna Ostoposides, am able to, with 100 percent certainty, under penalty of perjury, state that this is a criminally fraudulent statement because I know without a shadow of a doubt there are **No** ethical reasons Lynn Moyer can cite, other than fraudulently fabricated claims which she has already been proven to be willing to engage in by the fraudulent claims Plaintiffs have pointed out she made to the court in her Motion to be Relieved as Counsel.

The Falco case goes on to say:

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[7] It should be noted Lynn Moyer never denies the fact that she over and over again stated to plaintiffs, "I don't like this case" in her declarations or reply.

With respect to the issue of when an attorney may be entitled to attorneys' fees after being permitted to withdraw from a case, the Court in Estate of Falco stated:

Two crucial factors must be present for Appellant to prevail, First, we must conclude that withdrawal for ethical reasons justifies an award of attorneys' fees; an attorney who withdraws voluntarily without cause forfeits recovery for services performed (citations omitted). Second, the fact that the instant case must be sufficient to establish that Appellants did in fact withdraw for a justifiable reason. Business and Professions Code section 6068(c) specifies that an attorney has a duty to maintain only such actions, proceedings or defenses as appear to him or her to be legal or just. Fn. 10.

The Falco Court goes on to say:

Appellants argue that an attorney hired under a contingent fee agreement who determines that a case is meritless, and thus withdraws from the case for ethical reasons is entitled to recovery in quantum meruit. In considering the merits of Appellants' position, our concerns focus on two undesirable consequences of such a position. First, attorneys faced with failing claims may attempt to abandon a losing cause under the guise of ethical duty, hoping later to collect their fees if the client eventually recovers at trial or through settlement. As the court aptly stated in Hensel, supra, (citation omitted)

an attorney employed . . . on a contingency fee basis may not 'determine that it is not wroth his time to pursue the matter, instruct his client to look elsewhere for legal assistance, but hedge his bet by claiming a part of the recovery if settlement is made or a judgment obtained. Secondly, Appellants' position would require trial courts to weigh the veracity of the attorney's contention of an ethical motivation against the possibility that counsel's withdrawal was motivated by a desire to reduce counsel's own losses. . . The trial judge is faced with the dilemma of determining the proportions of these two desires: ethical versus financial motivation. At 1017 (emphasis added).

Falco further states:

"It is impossible to look into a lawyer's head, and it is unacceptable simply to take his word for his state of mind when the probity of his own conduct is at issue." At 1017, (emphasis added). "Noting the difficulty facing a trial court in making a factual determination of an attorney's motivation, we nonetheless find that an attorney's withdrawal in adherence to ethical mandates is justified, entitling counsel to recover attorney's fees in quantum meruit. But, the attorney has the burden of proof to show: (1) counsel's withdrawal was mandatory, not merely permissive under statute or State Bar rules; (2) the overwhelming and primary motivation of counsels' withdrawal was the obligation to adhere to

> **these ethical imperatives under statute or State Bar rules; (3) counsel commenced the action in good faith; (4) subsequent to counsel's withdrawal, the client obtained recovery; and (5) counsel has demonstrated that his work contributed in some measurable degree towards the client's ultimate recovery" (emphasis added). (CT 6 1192-1195)**

She relied on the fact in Falco where it states:

> **1. We nonetheless find that an attorney's withdrawal and adherence to ethical mandates is justified entitling counsel to recover attorneys' fees.**
>
> **2. The overwhelming and primary motivation for counsel's withdrawal was the obligation to adhere to these ethical imperatives under statute of the State Bar rules.**

Lynn Moyer, realizing, in order for her to recover financially from this case, needs to, as it is spelled out in the Falco case, show that the overwhelming and primary motivation for her withdrawal was due to ethical reasons. Attorney, Lynn Moyer, takes the language right out of the case and uses it in her reply opposition under line 22 of her Motion, where she falsely states:

> **The undersigned cannot continue her representation and adhere to ethical imperatives under current statute and State Bar rules. (SCT 2 413:22-23)**

Which is the identical language just used in Falco: *"But the attorney has the burden of poof to show: 1) counsel's withdrawal was mandatory, not merely permissive; 2) the* overwhelming and

primary motivation of counsel's withdrawal was the obligation to adhere to these ethical imperatives under statute or Bar Rules." (CT 6, 1194:24-26) Lynn Moyer then states in her reply:

> **It is believed that the work of the undersigned counsel has contributed substantially to the client's hopeful and potential recovery. (SCT 2 413:25-27)**

Which perfectly mimics Falco, where it states: *"5) counsel has demonstrated that his work contributed in some measurable degree towards the client's ultimate recovery."* (CT 6 1195:2-5)

Hence, she is caught trying to create a fraudulent scenario, as she **Never** makes this claim, which she absolutely would have if it were true, in her original Motion, but only after it is imperative for her to create unethical circumstances in order for her to recover financially on the case, does she stoop to this level to do so.

As was clearly stated in Falco:

> **"It is impossible to look into a lawyer's head, and it is unacceptable simply to take his word for his state of mind when the probity of his own conduct is at issue." At 1017 (emphasis added). (CT 6, 1994:12-15)**

1. THE REQUEST TO CONTINUE THE SUMMARY JUDGMENT MOTIONS

2. THE REQUEST TO CONTINUE THE SUMMARY JUDGMENT MOTIONS

B. Due Process

The court then states under Due Process on App., 9a:

> **Appellants contend they had a right to a fair hearing, and this encompasses the right to be represented by counsel. They further contend**

> **they should be represented by an attorney as a matter of right, although this is not a criminal case.**
>
> **We know of no authority which even suggests a Plaintiff in a medical malpractice case is entitled to be represented by counsel, and no such case has been cited by Appellants.**

Not only did Appellants cite an authority, but they cited the highest authority in this land, the United States Supreme Court. On App., 55a of Appellants' Opening Brief, Appellants state:

> The right to a hearing includes the right to appear by counsel (citations omitted). In its consideration of the right to counsel in Powell v. Alabame, supra, the United States Supreme Court declared; "What, then does a hearing include? Historically and in practice, in our country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. **Even the intelligent and educated layman has small and sometimes no skill in the science of law** ...If in any case, **civil or criminal**, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing and, therefore, of due process in the constitutional sense... (citations omitted). 'It is urged that depriving a litigant of the right of counsel is a violation of due process. There can be little doubt that in both civil and criminal cases the right to a

> hearing includes the right to counsel, and that the arbitrary refusal of such right constitutes a deprivation of due process." **At 673 (emphasis added).**

The court then goes on to state on App., 9a: *"But even if we assume the constitutional provisions are applicable to a civil case, there was no due process violation here."*

However, as Appellants point out, there was clearly due process violation here. On App., 56a of Appellants' Opening Brief, Appellants state:

> While the trial court's granting of the three 30 day stays may on its face appear as if the trial court was attempting to accommodate Plaintiffs, the truth of the matter is that from day one because of the voluminous size and the condition the case was in (i.e. having to address numerous Motion Summary Judgments, Mountains of Discovery, take Depositions etc.) these conditions prevented **Any Attorney** from stepping into the case at all under the circumstances the trial court set forth for the Plaintiffs and the extensions of 30 day stays without a continuation of the trial date did nothing to accommodate the Plaintiffs ability to find counsel.

Appellants in their Opening Brief clearly evidence that by the trial court refusing to continue the trial date, none of the hundreds of attorneys these litigants spoke to could even consider taking their case. Hence, this denial by the trial court to continue the trial date in the face of the fact that no attorney could take the case clearly deprived these Appellant litigants of their right to counsel, which is a violation of due process.

As is clearly stated by the United States Supreme Court in the Powell v. Alabame case:

> ...If in any case, **civil or criminal**, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing and, therefore, of due process in the constitutional sense... (citations omitted). 'It is urged that depriving a litigant of the right of counsel is a violation of due process. There can be little doubt that in both civil and criminal cases the right to a hearing includes the right to counsel, and that the arbitrary refusal of such right constitutes a deprivation of due process.' **At 673 (emphasis added).**

The court then states in its ruling on App., 9a:

> **"In its narrowest definition, [the right to be represented by counsel] is the right to appear by counsel in any adversary proceeding in which the adversary party has the benefit of or the right to counsel"]; *Mendoza v. Small Claims Court* (1958) 49 Cal.2d 668, 673; cf *Vann v. Shilleh, supra,* 54 Cal.App.3d at P. 200.)**

The Appellants in their Opening Brief on App., 55a-56a quoted the Vann v. Shilleh court regarding this statement. Its actual context states:

> The right to a hearing includes the right to appear by counsel... There is a constitutional basis for the right to counsel in **non-criminal** proceedings and, in its narrowest definition, it is the right to

> appear by counsel in any adversary proceedings in which the adversary party has the benefit of the right to counsel (citations omitted). (Vann v. Shilleh, supra, 54 Cal.App.3d at p. 200.)

As clearly pointed out by Appellants, the United States Supreme Court clearly states in Powell v. Alabame that the right to a hearing includes the right to appear by counsel.

> "...If in any case, **civil or criminal**, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing and, therefore, of due process in the constitutional sense... (citations omitted). 'It is urged that depriving a litigant of the right of counsel is a violation of due process. There can be little doubt that in both civil and criminal cases the right to a hearing includes the right to counsel, and that the arbitrary refusal of such right constitutes a deprivation of due process." **At 673 (emphasis added).**

The court clearly represents that in both **civil and criminal cases, the right to a hearing includes the right to counsel when desired or provided by the party desiring the right and that arbitrary refusal of such a right constitutes a deprivation of due process.**

The court, in its ruling on App., 10a, then states: *"Here the record discloses no due process violation. Appellants were not deprived of their rights to a fair hearing. As explained above, Appellants' contention that Attorney Moyer was permitted to withdraw on the eve of trial is misplaced."*

As explained above, Appellants were deprived of their rights to a fair hearing. Appellants in their Opening Brief clearly evidenced that by the trial court refusing to continue the trial date, none of the hundreds of attorneys these litigants spoke to could even consider taking their case. Hence, this denial by the trial court to continue the trial date in the face of the fact that no attorney could take the case clearly deprived these Appellant litigants of their right to counsel, which is a violation of due process, as is clearly stated by the United States Supreme Court in the Powell v. Alabame case.

The court then states on App., 10a: *"Contrary to Appellants' argument, they failed to present evidence demonstrating 'that no attorney could take their case because of the pending trial date.'"*

The court then goes on to state: *"Appellants also presented no evidence of their 'extensive efforts' to locate an attorney. Renna states that they conducted a diligent search, but her declaration lacks any details, such as the number of attorneys contacted and when they were first contacted."*

As the Motions of Appellants, as well as the record in this case shows, these statements are inaccurate. At the October 31, 2006, hearing, Renna Ostoposides clearly offered to present evidence demonstrating that no attorney could take the case because of the pending trial date, but the court told Appellant Renna Ostoposides that it did not want her to file this evidence.

> Ms. Ostoposides: I understand, your honor, at the same point though, I don't have any evidence that I've talked to counsel. **If you would like evidence, I could certainly bring it in to you.**
>
> The Court: Ma'am, you are no stranger to this courtroom in asking for continuances. You know what is required. **I'm not going to have you go back and file something else...** (RT D-3:17-28)

Contrary to court's statements, Appellants did provide details, such as the number of attorneys contacted and when they were first contacted in their Motions to the court:

> Since the Court initially issued the first stay in this matter, Plaintiffs have diligently sought to obtain other counsel and have toiled on a daily basis seeking to locate an attorney by calling various attorneys via Internet, personal and other attorney referrals, have sent out over 150 letters, case synopsis, pleadings and even entire case files to attorneys for their representation in this matter. However, while several attorneys have advised Plaintiffs that their case is meritorious and have expressed interest in taking the case, they have also advised Plaintiffs that they either have prior trial commitments, they do not have enough time to adequately review the case and make a decision and/or to conduct discovery, oppose the numerous Summary Judgment Motions, etc. and prepare for trial. (CT 6 1340:10-20)

The court then states on App., 10a: *"In any event, the court had accommodated the problem by granting numerous continuances and stays of proceedings."*

As Appellants clearly evidenced, the court had not accommodated the problem. The court did not grant numerous continuances to Appellants, and because the court was unwilling to change the trial dates, the stays proved ineffective in obtaining counsel. On App., 36a of Appellants' Opening Brief under footnote 2, it states:

> Throughout these transcripts, references have been made by the trial court concerning alleged "numerous hearings in the past"; that the court has been waiting for Plaintiffs to get counsel; that

> "this case has been delayed and delayed", specifically, at the hearing on Plaintiffs' former attorney's Motion To Withdraw held on September 24, 2001. It is important to note that the statements contained in the transcripts regarding the number of Plaintiffs' appearances before the trial court with respect to continuances in order to obtain counsel prior to our former attorney's Motion To Withdraw are misleading. See Declaration of Renna Ostoposides in Writ of Mandate, which represents a true and accurate statement concerning the appearances by Plaintiffs since the date of filing of Plaintiffs' summons and complaint on November 20, 2000.

As Plaintiffs also pointed out in their Motion to the court:

> 5. While this Court has granted Plaintiffs three separate stays in this matter, which total 90 days, it now appears that because the stays were given in 30-day increments, the 30-day stays, in effect, have done little to facilitate Plaintiffs' efforts to locate counsel. At the time of the first September 24, 2001 stay (after the court permitted Plaintiffs' counsel's withdrawal from the case), the Court continued the trial to March 14, 2002 and discovery cut-off date to February 14, 2002. Additionally, summary judgment motions were continued to February 11, 13 and 14, 2002, and expert witnesses to be designated by January 23, 2002. Because this Court has refused to continue the trial in this matter, the last two stays granted to Plaintiffs have been ineffective; all of the attorneys which Plaintiffs have consulted to date have unequivocally stated that notwithstanding the

other time constraints set by the court, the trial date is just too close and they need several months to prepare for same. **(See attached Declarations of Russell F. Behjatnia and John A. Eberlein hereto). (CT 6 1340:22-27, 1341:1-19)**

6. Additionally, Plaintiffs have been advised by several prospective attorneys that unless the trial is continued for a minimum period of six months, their **malpractice insurance** will not permit them to take the case with the time constraints as they presently stand.

7. Further, because no depositions or discovery have been taken by Plaintiffs, and a unanimous belief that the case is underdeveloped and clearly not ready for trial, prospective attorneys have advised Plaintiffs that until they have assurances that this Court will give them adequate time to prepare this matter, neither they, or any other competent attorney will even consider taking the case. **(See attached Declarations of Russell F. Behjatnia and John A. Eberlein hereto).**

In addition to this, the court flagrantly allowed defendants to violate the 30-day stays by not enforcing its own order, which impeded the stay orders. Appellants clearly evidenced to the court that defendants were continuing to propound mounds of discovery during the stay. However, though they admonished them to stop, when Appellants brought the fact that they were continuing to ignore the order to the trial court, the trial court never intervened to stop them. In respondent Schmid & Voiles brief, page 18, which all defendants joined, they chose to misrepresent once again the true facts of this case to this court when they state:

The trial court refused to grant Plaintiffs' request to suspend all proceedings until new counsel was found.

On page 19 of respondent Schmid & Voiles' brief as well as in the transcript, the trial court clearly stated to Appellants:

> So, you've got one month, you know, **stay on everything.** (RT A-11:6-7)

The fact that the trial court did suspend all proceedings is further evidenced at the December 2001 hearing. Appellant Renna Ostoposides brought all the documents propounded by the defense up to that point to the trial court in order to show the trial court what was happening. The court, by their response, clearly evidenced that it had suspended all proceedings.

> **Ms. Ostoposides: Your honor, if I could add one more thing with regard to the stay, it has not been adhered to by the defense. We keep getting stuff propounded upon us, subpoenas for medical records, interrogatories. It has been flagrantly violated, and you have – and I believe I was here last time when you told them specifically nothing is to be sent to the Plaintiffs. And they continue to do so. And I can show you all of this. Okay? This is stuff they are sending us. And they are not adhering to the stay.**
>
> **The Court: Well, I don't know who did it. But the stay is in effect until January 1st. So subpoenas don't have to be responded to at this point. And you're going to have to send out your subpoenas January 2nd. (CT D-7:22-28; D-8:1-8)**

Although this behavior was evidenced to the court on a continual basis in all Appellants' Motions, the court never intervened to stop or sanction their behavior. Despite the fact that defendants, in their respondent's brief on page 18, Schmid & Voiles clearly state they realize discovery was stayed. They clearly volitionally chose to ignore this ruling as Appellants clearly evidenced in their Motion to the trial court. (CT 6 1342-1346)

The court finally states on App., 10a regarding this matter: *"Under these circumstances, Appellants were not deprived of a fair hearing."*

Contrary to this statement, under these circumstances, Appellants were deprived of a fair hearing.

C. Statutory Continuance

The court then states under C. Statutory Continuance on App., 10a:

> Appellants contend the trial court erred by not considering their joint oppositions to the summary judgment motions. We presume the court considered all of Appellants' opposition papers. (Evid. Code, § 664 ["It is presumed that official duty has been regularly performed"].) Although the court stated at the hearing that it only had one opposition, it meant that it only had one opposition addressing the substantive issues.

The evidence clearly shows that the court did not read Appellants' oppositions to the Summary Judgment Motions of all defendants. Therefore, the trial court did err by not considering their joint oppositions to the Summary Judgment Motions. Hence, the presumption that the trial court considered all Appellants opposition to Defendant's Motion Summary Judgments cannot be ethically made. As Appellants stated in their Opening Brief, App., 62a:

The judge did not even acknowledge that Plaintiffs filed oppositions to all defendants motion summary judgments, hence granting all motion summary judgments resulted in a manifest miscarriage of justice and abuse of discretion.

At the April 18, 2002 motion summary judgment hearing Judge Ramona See did not even acknowledge that Plaintiffs had filed their oppositions to defendants Motion for Summary Judgments. (RT p. J-8 II. 23-28; RT p. J-9 II. 1-15) (CT p.1640, p.1647, p.1654; CT p.454, 455; CT. p.437).

When Plaintiff Renna Ostoposides tried to point out to the Judge that there were oppositions filed that the court was evidently unaware of, the judge simply stated that she saw one opposition and when Plaintiff Renna Ostoposides pointed out that there was more than one and that Plaintiffs filed oppositions in regards to all motion summary judgments the Judge simply disregarded her attempts to rectify the situation, referred her to the court file and walked away. Hence she did not consider them in her ruling. This led to a manifest miscarriage of justice for the Plaintiffs and an abuse of discretion.

And as was revealed in the reporter's transcript, April 18, 2002:

> The Court: -- I saw no opposition nor separate statement of disputed facts nor any supporting

evidence. I believe that is the third line of every one of them.

Mr. Fonda: Thank you, your honor.

Ms. Ostoposides: Your honor, that's incorrect. There was an opposition filed in this case. In regard to the motion for summary judgments, are you saying that you have not seen that?

The Court: I saw **one** opposition filed.

Mr. Fonda: Yes, as to Dr. Laurie.

Ms. Ostoposides: There was other oppositions filed in regards to every single one of these. You're saying you don't have those in the file?

The Court: Ma'am, the file says what it says. You'll just have to look at the file, to see what we've reviewed.

Ms. Ostoposides: Well, it's incorrect. (RT J-8:25-28, J-9:1-13)

The trial court is clearly stating, when they say, *"I saw **no opposition**,"* that they saw no opposition to defendant's Motion Summary Judgments, other than the **one** opposition that was filed by Dr. Lurie. Hence, the court is clearly stating to Appellants that **no** opposition, other than the **one** opposition, was filed by Appellants.

The further evidence that the trial court did not see Appellants opposition to defendants Motions, other than Dr. Lurie's, is that the trial court did not make any comments about the substance of their opposition motions or rulings whatsoever regarding them.

Hence, as Appellants clearly state in their Opening Brief, the judge did not consider their oppositions to all the Motion Summary Judgments in her ruling. Hence, granting all Motion Summary Judgments resulted in a manifest miscarriage of justice for the Plaintiffs and an abuse of discretion.

The court then states in their ruling on App., 10a: *"In any event, if the court had reviewed the oppositions, it would have rejected Appellants contentions."*

Isn't it true that we're not here to discuss what the court would have done, but what they did? What the trial court would have done is not at issue here. What the trial court did is. And as the evidence clearly shows, what the trial court did was fail to see the Appellants' filed oppositions to defendant's Motion Summary Judgment and review them. Hence, they did not consider them in their ruling, and as the Plaintiffs pointed out in their Opening Brief, this led to a manifest miscarriage of justice for the Plaintiffs and an abuse of discretion. (Appellants' Opening Brief App., 62a)

Justice would have clearly granted Appellants' opposition to defendant's motion summary judgments as their contention that the trial court erred by not moving the trial date so that an attorney could take their case, hence depriving them of their constitutional rights to due process, as defined under the Constitution of the United States of America, was well founded.

Even though the lower court, as has been pointed out, failed to make any comments regarding the substance of Appellants' joint oppositions to defendant's motion summary judgments or rulings regarding them, the Appellant court does address Appellants' joint oppositions to defendant's motion summary judgments and rules on them. Hence, the rest of the court's ruling regarding Appellants' oppositions to defendant's motion summary judgments are based on their account of what the trial court would or should have done. Because the court's ruling regarding Appellants' motion summary judgment oppositions are based on their ruling

and not the fact that the lower court made the mistake of not ruling on their motions, the rest of the court's ruling regarding Appellants' motion summary judgment oppositions should be deemed invalid.

However, Appellants would like to point out some other errors made by the court in these sections that speak about the rulings on Appellants' motion summary judgment oppositions. The court, on App., 11a of their ruling, states: *"Only one attorney declared that he could not take the case because of the proximity of the trial date and due date for the oppositions to the summary judgment motions."*

However, the truth of the matter is that **Every** attorney Appellant spoke to declared this, not only one.

The court then states on App., 11a: *"A discretionary continuance was not warranted either. At the time of the hearing, the case had already been pending for 17 months. The court had already continued the summary judgment hearings for approximately 4 months and had issued three 30-day stays of the proceedings. Appellants are not entitled to an unlimited number of continuances for an indefinite amount of time. The trial court gave Appellants a reasonable period of time to employ new counsel to assist them with the preparation of opposition papers."*

As Appellants have pointed out, the 30-day stays of the proceedings without the court continuing the trial date so an attorney could step into the case were not effectual at all. Appellants were not looking for an unlimited number of continuances for an indefinite amount of time. Appellants needed the trial court to continue the trial date so that an attorney could step into the case. Had the trial court listened to the reality of this situation, the case would never have been pending for so long. As Appellants have pointed out, the 30-day stays of the proceedings without the court continuing the trial date so an attorney could step

into the case were not effective at all. Hence, a discretionary continuance of the trial date was warranted.

The court's ruling on App., 15a then states: *"Appellants did not submit any evidence to demonstrate that the respondents were not entitled to summary judgment."* The footnote to this statement states::

> On appeal Appellants claim that they were unable to do so due to their in pro. Per. Status. "[Self-representation is not a ground for exceptionally lenient treatment." *(Rappleyea v. Cambell* (1994) 8 Cal.4th 975, 984-985.) Litigants who are in pro. Per. Should be treated like other parties and are entitled to the same consideration as other attorneys and litigants. *(Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

As is made abundantly clear in this case, Appellants were not in pro per but were **forced** into pro per by the unwillingness of the trial court to change the trial date. And, hence, were ***Involuntary In Pro Per Litigants***, and as such were under an involuntary pro per status. As Appellants pointed out in Gamet v. Blanchard (2001) 91 Cal App 4th 1276:

> Litigants who represent themselves are not entitled to special exemptions from the California rules of court or code of civil procedure. However, **they are entitled to treatment equal to that of a represented party, ...which is not only important to serve the ends of justice but to maintain public confidence in the judicial system... Trial judges must acknowledge that propria persona litigants often do not have an attorney's level of knowledge about the legal system... Trial judges should not be wholly**

> **indifferent to in pro per litigant's lack of formal legal training... Judges are charged with ascertaining the truth, not just playing referred... when disposing of cases becomes an end in itself, justice and fairness can easily be sacrificed.** (Appellants' Opening Brief, App., 58a-60a)

Appellants were clearly unable to, in their involuntary pro per status, properly represent themselves due to their involuntary pro per status, as they clearly stated to the court in Appellants' Opening Brief. (Appellants' Opening Brief, App., 58a-62a)

4. LURIE'S MOTION FOR SUMMARY JUDGMENT

The court states on App., 18a: *"Before her withdrawal, Moyer prepared and filed opposition to only one summary judgment motion, the motion filed by Mark Lurie. Dr. Susy Peng stated, in Dr. Mark Lurie's Motion for Summary Judgment, that her opinion was that the care provided by Lurie to decedent 'adhered to the standard of care at all times, and was not a cause of the [decedent's] demise.' Lurie first saw decedent in a cardiology consultation, confirmed decedent's history of severe cardiac disease, examined him, and ordered laboratory tests and medications. Lurie appropriately discharged decedent from the hospital when his cardiac and kidney functions were stable and his fluid status was balanced. Lurie monitored decedent after he underwent abdominal surgery"*

All of Appellants' claims are premised on a medical malpractice claim. Medical malpractice is a cause of action for professional negligence. It is shown by demonstrating: (1) the standard of care in the professional community; (2) the doctor's failure to meet that standard; and (3) the patient's harm was caused by the doctor's deficient care. *(Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1077.)

The core issue in a medical malpractice cause of action is whether the defendant breached the prevailing standard of care in the community with respect to the type of treatment which the Plaintiff claims caused his or her injury. (*Landeros v. Flood* (1976) 17 Cal.3d 399, 410.) "'The standard of care in a medical malpractice case requires that medical service providers exercise that . . . degree of skill, knowledge and care ordinarily possessed and exercised by members of their profession under similar circumstances. The standard of care against which the acts of a medical practitioner are to be measured is a matter peculiarly within the knowledge of experts; it presents the basic issue in a malpractice action . . . .'" (*Barris v. County of Los Angeles* (1999) 20 Cal.4th 101, 108, fn. 1, citing *Alfe v. Alta Bates Hospital* (1992) 5 Cal.App.4th 208, 2150.)

A Plaintiff in a medical malpractice action must prove causation *"within a reasonable medical probability based upon competent expert testimony."* (*Jones v. Ortho Pharmaceutical Corp.* (1985) 163 Cal.App.3d 396, 402.)

Appellants' opposition to Dr. Lurie's Motion Summary Judgment reveals that expert Dr. Ed Woerz, states: *"Based upon my review of the medical records, Dr. Lurie failed to provide adequate diagnosis, proper treatment, specifically failing to take overall responsibility for the patient's medical condition. All of these negligent acts fell below the standard of care within a reasonable medical certainty and contributed and caused the early demise of John Ostoposides."* It is also revealed in the motion that Dr. Lurie, nurses at Little Company of Mary hospital failed to monitor decedent John Ostoposides and recognize complications (peritonitis) from surgery. It was the result of the inadequate administration of medical treatment, failure to properly monitor and care for the patient, failure to recognize and treat complications from the surgery (peritonitis) that caused his ultimate demise, including the duty to prescribe appropriate

medication, monitoring and recognizing and appreciating the complications resulting from the surgery at Little Company of Mary hospital in August of 1999.

This clearly contradicts Dr. Susy Peng's statement that the care provided by Lurie to decedent adhered to the standard of care at all times and was not a cause of the decedent's demise.

To be entitled to summary judgment, Appellants' opposition clearly stated:

> Code of Civil Procedure section 437c governs the procedure for motions for summary judgment. In *Lipson v. Superior Court* (1982) 31 Cal.3d 362,374 [182 Cal.Rptr. 629], the California Supreme Court succinctly stated the moving party's burden:
>
> > **Summary judgment is properly granted only when the evidence in support of the moving party establishes that there is no issue of fact to be tried. (citations). The moving party bears the burden of furnishing supporting documents that establish that the claims of the adverse party are entirely without merit on any legal theory. (citations) If the evidence accompanying the summary judgment motion is deficient, the moving party cannot rely on the unsupported allegation in his or her pleadings to prove the case. (citations).**
>
> As noted by the court in *Slaughter v. Legal Process & Courier Service* (1984) 162 Cal.App.3d 1236, 1244 [209 Cal.Rptr. 189], "summary

> judgment is a drastic procedure, and **Doubts** as to the propriety of granting the motion are resolved in favor of the party opposing the motion." "It is, of course, elementary that the motion for summary judgment should be denied if the papers submitted show there is a triable issue of fact (cite) and discretion is granted such a motion." See *Black v. Sullivan* (1975) 48 Cal. App.3d 557, 567 [122 Cal.Rptr. 119]. In determining whether, in the language of the Code, the papers submitted show that there is no triable issue as to any material fact, the "[a]ffidavits of the moving party are strictly construed and those of his [or her] opponent are liberally construed, and doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion. **Any conflicts in affidavits are to be resolved in favor of the non-moving party."** See *Cohen v. Southland Corp.* (1984) 157 Cal.App.3d 130, 137 [203 Cal. Rptr. 572].

Hence, the law clearly states: *"Summary judgment is a drastic procedure and **Doubts** as to the propriety of granting the motion are resolved in favor of the party opposing the motion. Any conflicts in affidavits are to be resolved in favor of the non-moving party."* Appellants' opposition clearly evidences contradictions to Dr. Peng's vague Motion Summary Judgment for Dr. Lurie. Hence, as stated in Cohen v. Southland Corp., supra, *any conflicts in affidavits are to be resolved in favor of the **non-moving party***.

Appellants' opposition is not stating that a mere possibility that defendant's negligence caused decedent's injury. It is clearly stating with an expert opinion that all these negligent acts fell below the standard of care within a **reasonable medical certainty** and contributed to and caused the early demise of John

Ostoposides. As stated above, the court issue in a medical malpractice action is whether the defendant breached the prevailing standard of care in the community with respect to the type of treatment which the Plaintiff claims caused his or her injury. (*Landeros v. Flood* (1976) 17 Cal.3d 399, 410.)

> To be entitled to summary judgment, a defendant must establish that a cause of action has **no merit** by showing that one or more of the elements of the cause of action cannot be separately established or that there is a complete defense to that cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).)

Suzy Peng's declaration did neither. Appellants clearly show through Dr. Ed Woerz' review, that her claims that the care provided by Lurie to decedent adhered to the standard of care at all times and was not a cause of decedent's demise are meritless and that evidence clearly exists contrary to her claims. Contrary to the trial court's ruling, Appellants clearly met their burden of demonstrating that Lurie's care of decedent fell below the standard of care for a medical professional and that Lurie's care and treatment caused and contributed to decedent's death. Hence, the burden did not shift to Plaintiffs to demonstrate that a trial issue of facts existed, even though they clearly evidenced that many did.

As Appellants clearly showed in their opposition to motion summary judgment, **summary judgment is a drastic procedure and Doubts as to the propriety of granting the motion are resolved in favor of the party opposing the motion.**

Any conflicts in affidavits are to be resolved in favor of the non-moving party opposing the motion. Cohen v. Southland Corp., supra.

Hence, contrary to this court's statement that "*accordingly, the trial court properly granted summary judgment in favor of Lurie.*" As has been shown, accordingly, they did not.

CONCLUSION

For all of the reasons stated herein all defendants motion summary judgments and adjudication orders and judgments should be reversed and Plaintiffs case sent back to trial court where they can have their case tried on the merits before a jury so they can see justice brought to the wrongful death of their father. The Plaintiffs also request that this court grant Plaintiffs a sufficient amount of time before trial as their case is voluminous and they need the proper amount of time for an attorney to be able to adequately prepare it for trial.

Respectfully submitted,

Dated: March 14, 2006

Olga Ostoposides In Pro Per	Socrates Ostoposides In Pro Per
Renna Ostoposides In Pro Per	Harry Ostoposides In Pro Per

APPENDIX F

U.S. Constitution: Fourteenth Amendment

Fourteenth Amendment – Rights Guaranteed Privileges and Immunities of Citizenship, Due Process and Equal Protection

Amendment Text | Annotations

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection fo the laws.

APPENDIX G

Federal Statute 28USCA Section 1915

§ 1915. Proceedings in forma pauperis

(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefore, by a person who makes affidavit that he is unable to pay such costs or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b) Upon the filing of an affidavit in accordance with subsection (a) of this section, the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court: (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(c) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(d) The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action.

On August 30, 2006, I deposited into the United States mail in Torrance, California

PETITION FOR A WRIT OF CERTIORARI & MOTION TO PROCEED IN FORMA PAUPERIS

I declare under penalty of perjury of the laws of the State of California that the above is true and correct.

Executed August 30, 2006, at Los Angeles, California.

_____ _____

Type or Print Name Signature

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action.

On February 5, 2007, I deposited into the United States mail in Torrance, California three copies to each defendant and 40 copies to the United States Supreme Court.

CORRECTED PETITION FOR A WRIT OF CERTIORARI

I declare under penalty of perjury of the laws of the State of California that the above is true and correct.

Executed February 5, 2007, at Los Angeles, California.

_____ _____

Type or Print Name Signature

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OSTOPOSIDES vs. GLIMP, M.D., et al.

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No. 06-1104

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In The Supreme Court of the United States

OLGA OSTOPOSIDES, et al.,

Petitioners,

v.

RICHARD GLIMP, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal Of California, Second Appellate District

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Olga Ostoposides, Renna Ostoposides, Harry Ostoposides, and Socrates Ostoposides ("Ostoposides") argue they were deprived due process during the course of California Superior Court proceedings by virtue of a court order granting their attorney's request to be relieved from further representation of them. Their assertions arise in the context of a civil action alleging wrongful death based upon a theory of medical malpractice. While they were representing themselves, motions for summary judgment were granted resulting in judgment against them.

The Ostoposides have inaccurately asserted that they were deprived of the right to have attorney representation. In reality, they were not prevented by the Superior Court from having an attorney. Rather, the Ostoposides and their prior attorney failed to maintain a meaningful attorney-client relationship and, after that relationship ended, the Superior Court allowed the Ostoposides ample opportunity to retain counsel of their choosing, which they failed to accomplish.

As shown by the holdings of this Court, the petitioners as civil litigants, who have not had their liberty deprived, had no right to court appointed counsel. Their claim of indigency did not give rise to any right to have appointment of counsel. There is no right to State appointed counsel in an action such as this, alleging wrongful death as a result of medical malpractice.

The petitioners received appropriate notice of motions for summary judgment, against which they filed opposition papers. Those motions were properly granted based upon the absence of triable issues of material fact.

This action was initiated when petitioners, acting in pro per, filed their complaint in the Los Angeles Superior Court on November 20, 2000, alleging wrongful death action arising from medical malpractice. (CT[1] 33-41.) On June 28, 2001, petitioners retained attorney Lynn Moyer. (RT[2] 2:13-14.) Ms. Moyer propounded and responded to discovery, met with experts, attended and took depositions, served a new "doe" amendment, and dismissed 15 defendants. (Pet. App. A at p. 6a.)

On September 17, 2001, Ms. Moyer filed a motion to be relieved as counsel, declaring that she and Renna Ostoposides did "not see eye to eye on many matters," and that Renna continually refused to take her recommendations and advice, making her counsel ineffective. (CT 1120-1126.) Ms. Moyer further declared that Renna told her that she was fired after a disagreement over how to proceed with the case. (CT 1123:16-19.) The record indicates petitioners and Ms. Moyer disagreed on how to proceed with the case, leading to Renna Ostoposides telling Ms. Moyer that she was fired and that she needed a psychiatrist. (CT 1123:16-19.) Renna Ostoposides also refused to sign her deposition transcript and interfered with the other petitioners' signing of their deposition transcripts. (CT 1123:22-27; 1124:3-4.) Ms. Moyer stated that she could not ethically continue representing petitioners and stated her willingness to further detail in in-camera proceedings her reasons for withdrawing. (CT 1194:24-26.)

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[1] The Clerk's Transcript component of the record presented to the California Court of Appeal.

[2] The Reporter's Transcript component of the record presented to the California Court of Appeal.

In their petition, petitioners for the first time assert that Ms. Moyer demanded that they pay $20,000 to finance trial preparation if they wanted Ms. Moyer to continue to represent them.

At the hearing concerning the withdrawal of Ms. Moyer, on September 24, 2001, Judge Ramona See of the Superior Court acknowledged the breakdown of the attorney-client relationship, stating: "I don't see how you can go forward on a trial with an attorney that you can't even talk to." (RT A-3:7-8.) The order allowing Ms. Moyer to withdraw was an appropriate exercise of the court's discretion. (Pet. App. A at pp. 6a-8a.)

In connection with the order to relieve Ms. Moyer as counsel, Judge See made several orders to allow petitioners ample time to retain new counsel. The court ordered the summary judgment motions that had been set for hearing in October 2001 to be continued to hearing dates of February 11, 13, and 14, 2002. (RT A-11:7-8, A-14:26, A-15:2.) The trial date was continued from November 13, 2001 to March 14, 2002, with Judge See stating: "I'm going to give you a continuance so you can get new counsel on the case." (RT A-9:22-24, A-10:6-7, A-11:7-8, A-14:26, A-15:2; CT 1180.)

After the initial 30-day stay expired, on October 31, 2001, the Superior Court granted petitioners a second 30-day stay to "permit plaintiffs time to obtain new counsel." (CT 1232:21-22.) At this hearing, the court advised petitioners that it had set the case for trial in March, intentionally giving them "a lot of time" so that whoever came in as an attorney would have plenty of time to get ready and advised petitioners to "get going." (RT C-4:3-6, C-5:17-18.)

On December 3, 2001, the Superior Court granted another ex parte application to extend the stay, again based upon petitioners' request for more time to retain an attorney. (CT 1259-1270.)

On January 22, 2002, petitioners' third ex parte application for an order extending the stay and continuing the trial date was denied. (CT 1339-1640.)

Thereafter, petitioners forced a delay in proceedings by filing an appeal on January 22, 2002 challenging the order granting attorney Moyer's motion to be relieved as counsel and the Superior Court's January 22, 2002 order denying petitioners' motion to stay the proceedings and continue the trial date. (CT 1335-1338.) On January 31, 2002, the Superior Court stayed the action pending the outcome of the appeal, and set a status conference for March 1, 2002. (CT 1690-1691.) On February 20, 2002, the Court of Appeal dismissed the improvidently filed appeal in this matter. (CT 1938.)

At a March 1, 2002 status conference, the court acknowledged the dismissal of the appeal and set hearings for March 21, 2002 on the various defendants' motions for summary judgment and for a trial-setting conference. Prior to the appeal, the trial date had been set for March 14, 2002. Therefore, the Superior Court's order scheduling a trial-setting conference for March 21, 2002 implicitly continued the trial date. (CT 1938; RT G-2:14-24.)

On March 21, 2002, nearly six months from the date that Judge See granted Ms. Moyer's motion to be relieved, the court heard defendants' motions for summary judgment. In light of petitioners' failure to present evidence of medical malpractice and medical causation, the motions

for summary judgment were granted. (Pet. App. A at pp. 14a-20a; CT 1960-1987.)

Petitioners then appealed the judgment. The Court of Appeal affirmed the judgment on February 27, 2006. (Pet. App. A at 1a.) Appellants' petition for rehearing was denied on March 15, 2006. (Pet. App. A at 21a.) On May 17, 2006, Appellants' petition for review by the Supreme Court of California was denied. (Pet. App. A at 22a.) On August 30, 2006, Appellants submitted a petition to the United States Supreme Court.

REASONS FOR DENYING REVIEW

I. THE QUESTIONS PRESENTED DO NOT WARRANT REVIEW AS IT IS CLEAR THAT PETITIONERS WERE NOT DENIED THEIR RIGHT TO BE REPRESENTED BY COUNSEL AND THEY HAD NO RIGHT TO COURT APPOINTED COUNSEL.

Although a civil litigant may have a right to counsel, if the litigant chooses to be represented by counsel, the courts are not required to provide counsel or otherwise delay proceedings indefinitely to allow a civil litigant to find an attorney.

Petitioners challenge the decision of the Court of Appeal, in which that court stated:

> We know of no authority which even suggests a plaintiff in a medical malpractice case is entitled to be represented by counsel, and no such case has been cited by appellants. But even

> if we assume the constitutional provisions are applicable to a civil case, there was no due process violation here. (See *People v. $30,000 United States Currency* (1995) 35 Cal.App.4th 936, 942, *Iraheta v. Superior Court* (1999) 70 Cal.App.4th 1500, 1503; *Fallis v. Dept. of Motor Vehicles* (1968) 264 Cal.App.2d 373, 383 ["In its narrowest definition, [the right to be represented by counsel] is the right to appear by counsel in any adversary proceeding in which the adversary party has the benefit of or the right to counsel"]; *Mendoza v. Small Claims Court* (1958) 49 Cal.2d 668, 673; cf. *Vann v. Shilleh* [(1975)] 54 Cal.App.3d [192,] at p. 200.) (Pet. App. A at p. 9a.)

Petitioners fail to discuss the rest of the Court of Appeal's discussion on this point, in which it stated:

> Here, the record discloses no due process violation. Appellants were not deprived of their rights to a fair hearing. As explained above, appellants contention that attorney Moyer was permitted to withdraw "on the eve of trial," is misplaced.
>
> Contrary to appellants' argument, they failed to present evidence demonstrating that "*no attorney* could take the case because of the pending trial date." (Italics added [by Court].) The declaration of Renna Ostoposides and attorney Russell Behjatnia are unhelpful. Only one attorney, John Eberlein, declared on January 18, 2002, that he could not take the case in part because of the upcoming trial date.
>
> Appellants also presented no evidence of their "extensive efforts" to locate an attorney,

> Renna states that they conducted a "diligent" search, but her declaration lacks any details such as the number of attorneys contacted and when they were first contacted. In any event, the court had accommodated the problem by granting numerous continuances and stays of proceedings.
>
> Under these circumstances, appellants were not deprived of a fair hearing. (Pet. App. A at pp. 9a-10a.)

As the Court of Appeal recognized, petitioners were not left without counsel "on the eve of trial." Ms. Moyer's application to withdraw was nearly two months before the then scheduled trial date, and the Superior Court continued the trial another four months, putting trial nearly six months away at that time. (Pet. App. A at pp. 7a-8a.)

Petitioners cite *Powell v. Alabama,* 287 U.S. 45 (1932), in support of their argument that the lower courts failed to follow this Court's precedent. However, that was a criminal case wherein the defendants were accused of criminal assault based upon a fight during which some victims were thrown off a train. (*Id.* at 50-51.) Petitioners focus upon the language of the opinion stating:

> If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense. (*Id.* at 69.)

In making their arguments, petitioners ignore the clear meaning of this statement – it would violate due process of a civil or criminal litigant if the court refused to allow an attorney retained by the litigant to act on the litigant's behalf in court proceedings. Clearly, that did not occur here.

Further, petitioners ignore the aspect of the opinion limiting the scope of the holding to criminal capital cases. (*Id.* at 71-72.)

Petitioners failed to cite the momentous decision in *Gideon v. Wainwright,* 372 U.S. 335 (1963), wherein this Court analyzed its precedents, including *Powell*, and laid down a rule that assures appointment of counsel in criminal proceedings, and stating:

> The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. (*Id.* at 344.)

Although overruled on other grounds in *Gideon*, in *Betts v. Brady,* 316 U.S. 455 (1942), this Court rejected out of hand even the thought that the due process clause could be interpreted to require "the furnishing of counsel in civil cases involving property." (*Id.* at 473.)

The right to government appointed counsel is premised upon a person's risk of loss of personal liberty. This Court has refused to extend the right to appointed counsel to include prosecutions which, though criminal, do not result in the defendant's loss of personal liberty. In *Scott v. Illinois,* 440 U.S. 367 (1979), the Court held that

> [T]he Sixth and Fourteenth Amendments to the United States Constitution require only that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense. (*Id.* at 373-374.)

In *Lassiter v. Dep't of Social Services,* 452 U.S. 18 (1981), this Court surveyed its holdings and stated:

> In sum, the Court's precedents speak with one voice about what "fundamental fairness" has meant when the Court has considered the right to appointed counsel, and we thus draw from them the presumption that an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty. It is against this presumption that all the other elements in the due process decision must be measured. (*Id.* at 26-27.)

In *Lassiter* this Court summarized its holding in *Mathews v. Eldridge,* 424 U.S. 319 (1976), as propounding:

> [T]hree elements to be evaluated in deciding what due process requires, viz., the private interests at stake, the government's interest, and the risk that the procedures used will lead to erroneous decisions. We must balance these elements against each other, and then set their net weight

> in the scales against the presumption that there is a right to appointed counsel only where the indigent, if he is unsuccessful, may lose his personal freedom. (*Lassiter* at 27.)

In *Lassiter* the Court concluded that the Due Process Clause did not require the appointment of counsel when a State "seeks to terminate an indigent's parental status." (*Id.* at 33.)

There is simply no indication in this Court's precedents that the Fourteenth Amendment would require court appointment of counsel in a civil action for wrongful death based upon allegations of medical malpractice, as suggested by petitioners.

II. PETITIONERS' ARGUMENTS REGARDING ACCESS TO COURTS AS INDIGENTS DO NOT WARRANT REVIEW BY THIS COURT.

Petitioners' references to statutory rights to access to federal courts in Forma Pauperis pursuant to 28 USC § 1915, and the application of that statute in *Adkins v. E.I. Dupont de Nemours & Co.*, 335 U.S. 331 (1948), are inapposite. In *Adkins*, the issues were the scope and application of § 1915, "which authorizes a citizen to prosecute or defend actions in federal courts 'without being required to prepay fees or costs or for the printing of the record in the appellate court . . . upon filing in said court a statement under oath in writing, that because of his poverty he is unable to pay the costs of said suit or action or appeal, or to give security for the same, . . .'"

Adkins does not help petitioners for two reasons. First of all, this action was not litigated in federal court.

Second, petitioners have made no showing that they were deprived of access to the courts by virtue of their inability to pay a filing fee or other litigation costs.

There is nothing in the statute or *Adkins* suggesting an obligation of a State to appoint counsel in a civil case, such as the one litigated by petitioners herein.

CONCLUSION

Although the Ostoposides' sense of loss as a result of the death of their loved one is understandable, this petition is a misguided effort on their part to prolong litigation of a case in which there was a just determination of their claim. They have failed to raise any issue deserving of this Court's attention.

They have no right to court appointed counsel in this civil litigation, and no right derives from their assertion of indigency. They had ample opportunity to find and retain counsel. They were never deprived access to the courts as a result of indigency.

This Court should deny the Ostoposides' petition.

Dated: March 12, 2007

Respectfully submitted,

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OLGA OSTOPOSIDES, et al.,

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Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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II. The issue of depriving a civil litigant who is indigent and proceeding in forma pauperis of his due process right under the Constitution is an issue of great significance and public concern, which affects the rights of every civil indigent litigant in the state of California under current conflicting appellate opinions, which contradict the U.S. Supreme Court, as well as the California Supreme Court's long-standing precedent of guaranteeing that no citizen shall be denied an opportunity to commence, prosecute or defend an action, civil or criminal, in any court of the United States, solely because his poverty makes it impossible for him to pay or secure the costs. 8

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INTRODUCTION

The decision of the Ninth Circuit Appellate Court should not be allowed to stand because it incorrectly suggests that there is **no** due process right to counsel in civil cases and civil indigent cases, which contradicts and violates all civil litigants' due process rights under the Fourteenth Amendment of the United States Constitution.

Respondents' opposition brief is *riddled* with misrepresentations that have been overwhelmingly proven to be false in petitioners' Writ of Certiorari. Not only have they misstated the facts of our case, but they have supported it with cases that are inapposite. These deliberate and inaccurate statements violate the purpose of filing an opposition brief, as spelled out under Rule 15 of this court, which states in pertinent part that *"Counsel are admonished that they have an obligation to the court to point out in their opposition brief any perceived misstatement of facts or law made in the petition."* However, instead, respondents have volitionally violated their obligation to this court under Rule 15 and have willingly *made* **misstatements of facts and law** regarding this case that have already been evidenced to be untrue, hence violating the very purpose of filing an opposition brief under Rule 15 of this court and thus showing contempt. Having prospered on their misrepresentations thus far, they are now hoping to prosper on those known volitional misrepresentations here in the U.S. Supreme Court.

REASONS FOR GRANTING THE WRIT

I. The issue of depriving a civil litigant of his due process right under the Constitution of the United States of America is an issue of great significance and public concern, which affects the rights of every civil litigant in the State of California under current conflicting appellate opinions, which contradict this U.S. Supreme Court as

well as the California State Supreme Court's long-standing precedent of guaranteeing that due process under the U.S. Constitution guarantees the right to a hearing, and that right includes the right to counsel in both civil and criminal cases.

The Ostoposides have not *accurately* asserted that they were deprived the right to have attorney representation, as respondents misrepresent to this court in their Opposition Brief, but the Ostoposides have *accurately* represented to the court that the due process clause of the Fourteenth Amendment of the U.S. Constitution, according to this U.S. Supreme Court, guarantees **all civil litigants** the right to an attorney. The judge allowed petitioners' attorney to withdraw on the eve of trial and **refused** to change the trial date so that another attorney could step in and represent petitioners, which left petitioners **unrepresented** at their Motion Summary Judgment hearing, and there the court disposed of petitioners' case. Petitioners ask this court whether the appellate court's ruling stating, "we know of no authority which even suggest a plaintiff in a medical malpractice case is entitled to be represented by counsel," backed by published appellate court opinions that state, "as a general rule, there is no due process right to counsel in civil cases" contradicts and violates all civil litigants' due process rights under the Fourteenth Amendment of the U.S. Constitution. Further, whether the court's refusal to change the trial date so an attorney could step in constituted a denial of a hearing and, therefore, a denial of due process in the constitutional sense, and finally, whether these civil petitioners, who were forced into an **involuntary pro per indigent status**, as well as every civil indigent in this nation, have a right under the due process clause of the U.S. Constitution to have a court-appointed attorney, and does not have to pay **any costs** under Federal Statute 28 USCA Section 1915.

In the present case, the Court of Appeal reached a

contrary conclusion stating the due process clause of the Constitution does not guarantee or embrace such a right when they stated, *"We know of no authority which even suggests a plaintiff in a medical malpractice case is entitled to be represented by counsel,"* backed by the published appellate court opinions that state, *"As a general rule, there is no due process right to counsel in civil cases."*. This long-standing precedent has been severely challenged by these published opinions of the appellate court in petitioners' case herein. (*People v. $30,000 United States Currency (1995) Cal.App. 4th 936, 942;)(Iraheta v. Superior Court (1999) 70 Cal.App 4th 1500, 1503; (Fallis v. Dept. of Motor Vehicles (1968) 264 Cal.App. 2d 373, 383.).*

These matters of conflicting opinions regarding these public policies are significantly affecting the administration of justice and the rights of every civil litigant in the State of California, and are denying the due process right of civil litigants under the U.S. Constitution. As an example of known misrepresentations by respondents to this court, respondents cite the opinion of the appellate court, which states, "We know of no authority which even suggests a plaintiff in a medical malpractice is entitled to be represented by counsel **and no such case has been cited by appellants**."

This statement (as well as *every* statement cited by respondents regarding the opinion of the appellate court in ROB) was already shown by petitioners to be an **inaccurate statement** on the appellate court's part towards them (Pet. App. E, 97a-107a, 88a-97a). As respondents well know and this court can see, the appellate court clearly *missed* the fact that not only did petitioners cite case authority, but they cited the highest case authority in the land, this U.S. Supreme Court. In petitioners' AOB, App. D, 55a, they state:

> In **Mendoza v. Small Claims Court, 49 Cal.2d 668 (1958)**, the court addressed the issue of whether the deprivation of a litigant's right to counsel constitutes

> a violation of due process wherein it stated: "The right to a hearing includes the right to appear by counsel." (citations omitted) In its consideration of the right to counsel in Powell v. Alabama, supra, the United States Supreme Court declared: "What then does a hearing include? Historically and in practice, in our country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. **Even the intelligent and educated layman has small and sometimes no skill in the science of law**... If in any case, **civil or criminal**, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing and therefore of due process in the constitutional sense...(citations omitted). It is urged that depriving a litigant of the right of counsel is a violation of due process. There can be little doubt that in both **civil and criminal** cases the right to a hearing includes the right to counsel, and that the arbitrary refusal of such right constitutes a deprivation of due process."

This declaration by this U.S. Supreme Court regarding due process clearly evidences that civil litigants in a medical malpractice case have a due process legal right to be represented and heard by counsel in order to be afforded the right to a fair hearing under the U.S. Constitution.

In *Roa v. Lodi Medical Group* (1985) 37 Cal 3d 920, 925-926, the California State Supreme Court reaffirmed this U.S. Supreme Court's declaration of due process. The Roa opinion stated regarding the civil litigants in a medical malpractice case regarding due process and the right to

counsel in civil actions:

> Plaintiffs' Due Process argument rests on the claim that the statute impermissibly infringes on the right of medical malpractice victims to retain counsel in medical malpractice actions. (2) Although the right to be represented by retained counsel in civil actions is not expressly enumerated in the federal or state constitution. **Our cases have long recognized that the constitutional Due Process *guarantee* does embrace such a right** (See e.g. *Powell v. Alabama* (1932) 287 U.S. 45, 68-69 (77 Ed. 158, 170-171, 53 s.ct. 55, 84 A.L.R. 527); *Mendoza v. Small Claims Court* (1958) 49 Cal.2d 668, 673 (321 P. 2d 9); *Roa v Lodi Medical Group, supra*)

In the present case, as stated herein, the Court of Appeal reached a contrary conclusion, stating the due process clause of the Constitution does not guarantee or embrace such a right and backed it with the published opinions stated herein.

In respondents' Opposition Brief, page 8, they cite petitioners as ignoring the clear meaning of due process, as decided by this U.S. Supreme Court in *Powell* and declare: *"In making their arguments, petitioners ignore the clear meaning of this statement – it would violate due process of a civil or criminal litigant if the court refused to allow an attorney retained by the litigant to act on the litigant's behalf in court proceedings. Clearly, that did not occur here."*

However, in making their argument, it is not petitioners who are ignoring the clear meaning of this statement in *Powell*, but respondents who are *knowingly* misrepresenting it. Likewise, the authority cited by respondents in *Gideon* is inapplicable to the petitioners' case in that the rules laid down in *Gideon* were clearly applied only in criminal proceedings and have no bearing on a civil case. Further, their authority cited in *Betts*, *Scott* and *Lassiter* are clearly inapplicable to petitioners' civil case herein. It has clearly

been established by this court in *Powell*, as well as *Van v. Shilleh, 54 Cal.App.3d 192, 126 Cal.Rptr. 401 (1975)* and *Mendoza, supra*, which cite *Powell*, that petitioners have a right to counsel in civil cases.

In petitioners' case herein, the trial court abused its discretion in denying petitioners' motions for a continuance of the trial date in order to retain an attorney. The court based its denial on a fast-track policy against continuances without considering whether petitioners' case justified a departure from that policy. **(App. D, 47a-63a)** Appellants, in their Opening Brief, clearly evidence that by the trial court refusing to continue the trial date, none of the hundreds of attorneys these litigants spoke with could even consider taking their case. Hence, this denial by the trial court to continue the trial date in the face of the fact that no attorney could take the case clearly deprived these appellant litigants of their right to counsel, which is a violation of due process.

At the September 24, 2001, hearing concerning the withdrawal of attorney Lynn Moyer, Judge Romona See stated to petitioners, *"Don't expect that if you have counsel coming in here that they are going to come in and move to continue the trial date."* (RT A-10:19-21)

After the initial 30-day stay expired on October 31, 2001, petitioners came to court presenting overwhelming evidence to the court that petitioners had been advised by several prospective attorneys that until they had assurances that the court would give them adequate time to prepare this matter, because a unanimous belief existed among them that the case was severely underdeveloped and clearly not ready for trial (as it was a voluminous case with several defendants, had numerous motions summary judgments, mountains of discovery to be addressed, several depositions to be taken, and virtually no discovery sent out by the previous attorney for petitioners) neither they, nor any other competent attorney, would even consider taking the case. They further

stated and assured petitioners that their malpractice insurance would not allow them to take a case of this magnitude under the current time constraints of the trial date. (App. D, 38a)

Despite this fact, Judge Romona See stated, "*...I'm not going to continue the trial date...I'll grant an additional 30 days of stay, but that's it, ma'am. You've got to get going. If you can't find counsel, then you have got to start responding to this discovery yourself.*" (RT C-5:27-28, 17-20)

On December 3, 2001, petitioners returned to court having now spoken with hundreds of attorneys who expressed the same concerns the previous attorneys represented to petitioners during their first 30-day stay, and that was simply that due to the voluminous size and condition of the case, the trial date needed to be changed in order for them, or any other competent attorney, to be able to take the case. When petitioners offered to present their evidence of this, Judge Romona See **refused** to allow petitioners to file it. Ms. Ostoposides stated, ***"...If you would like evidence, I could certainly bring it in to you."***. Judge See stated, ***"...I'm not going to have you go back and file something else."*** Judge Romona See then stated, ***"You may be representing yourself in this trial, but I'm not continuing the trial date."*** (RT D-3:15-16, D-3:19-20, D-5 and 6:27-1)

True to her word, Judge Romona See did not change the trial date and left petitioners unrepresented at their Motion Summary Judgment hearing, where she then disposed of petitioners' case. As is clearly stated by this U.S. Supreme Court in *Powell*, *"There can be little doubt that in both civil and criminal cases the right to a hearing includes the right to counsel, and the arbitrary refusal of such right constitutes a depravation of due process."*

In *Van, supra* the Court of Appeal addressed issues identical to the ones presented herein:

> As we have indicated, the presiding judge made no effort to analyze the situation in which Mr. Shilleh

> found himself the denial by judge Southers was preemptory and based solely on a policy against continuances without considering whether the case before it justified a departure from that sultry policy...**Plaintiffs argue that a denial of a continuance is not a deprivation of Due Process of law, but the right to a hearing includes the right to appear by counsel.** (*Mendoza v. Small Claims Court* (1958) 49 Cal.2d 668, 673 (321 (200) p.2d 9) *Van v. Shilleh, supra*, p. 198-199)

Under these circumstances the trial court's refusal to change the trial date so an attorney could represent petitioners was tantamount to refusing to hear a party by counsel, and it reasonably may not be doubted that such a refusal was a denial of a hearing and, therefore, of due process in the Constitutional sense.

These contradictions regarding the due process clause of the Constitution are substantially affecting the rights of every civil litigant in California. Harmony and uniformity of decision need to be restored so that we can truly say "*With liberty and justice for all.*"

II. The issue of depriving a civil litigant who is indigent and proceeding in forma pauperis of his due process right under the Constitution is an issue of great significance and public concern, which affects the rights of every civil indigent litigant in the state of California under current conflicting appellate opinions, which contradict the U.S. Supreme Court, as well as the California Supreme Court's long-standing precedent of guaranteeing that no citizen shall be denied an opportunity to commence, prosecute or defend an action, civil or criminal, in any court of the United States, solely because his poverty makes it impossible for him to pay or secure the costs.

This U.S. Supreme Court and the California Supreme

Court make it abundantly clear that poor litigants shall have the same opportunity to be represented by **(court appointed)** counsel as litigants in more fortunate financial circumstances. (*Adkins v. E.I. Dupont de Nemours & Co.* 335 US 331-344) In the present case, the Court of Appeal reached a contrary conclusion, stating that the due process clause of the Constitution does not guarantee or embrace such a right. This long-standing precedent has been severely challenged by the opinion of the appellate court already stated herein.

These matters of conflicting opinion regarding these public policies are significantly affecting the administration of justice and the rights of every **civil indigent** litigant in the State of California and are denying the due process right of **civil indigent** litigants under the U.S. Constitution.

Federal Statute 28 USCA Section 1915 is a statute regarding proceeding in forma pauperis. In *Adkins v. E.I. Dupont de Nemours & Co. supra*, the U.S. Supreme Court declares that Section 1 of the statute is intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute or defend an action *civil or criminal* **"in any court of the United States"** solely because his poverty makes it impossible for him to pay or secure the **costs.** Not content with this safeguard for the poor in federal courts, congress, in Section 4 of the Act, provided that the court may request any attorney of the court to represent such poor person. Section 3 of the statute specifically states that litigants who make affidavits of poverty shall be entitled to the same court processes and have the same right to the attendance of witnesses and the same remedies as are provided by law in other cases and as pointed out Section 4 of the statute makes it abundantly clear that poor litigants shall have the same opportunity to be represented by counsel as litigants in more fortunate financial circumstances. The statute was intended for the benefit of those too poor to pay in giving security for costs, and it was not intended that they should be compelled

to employ only paupers to represent them.

The California Supreme Court reaffirmed this U.S. Supreme Court declaration. In 1971, the California Supreme Court entertained a request for in forma pauperis status in a dissolution proceeding and ruled that *the right of any indigent to proceed without costs was applicable to all cases in the state.* (*Earls v. Superior Court 6* Cal.3d 109, 114-115)

These appellate court decisions are clearly depriving every **civil indigent litigant** of their right to be represented by court-appointed counsel and hence depriving them of their due process rights under the U.S. Constitution.

These indigent petitioners were further violated by the trial court when, after disposing of their case at the Motion Summary Judgment hearings, at cost hearings, thereafter, even though the judge knew petitioners were ***involuntary pro per litigants proceeding in forma pauperis,*** she granted $50,000 in costs to defendants against each petitioner. (App. D, 45a) This clearly violated the U.S. Supreme Court's declaration in *Adkins, supra*, as well as *Earls, supra*, which states, "*The right of any indigent to proceed without costs was applicable to all cases in the state.*"

These contradictions are substantially affecting the rights of every civil indigent litigant in California. Harmony and unity need to be restored so that we can truly say, "*with liberty and justice for all.*"

CONCLUSION

For all of the reasons stated above, this petition for a writ of certiorari should be granted.

Respectfully submitted, March 24, 2007

Olga Ostoposides	Renna Ostoposides
Harry Ostoposides	Socrates Ostoposides

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action.

On March 24, 2007, I deposited into the overnight mail service in Torrance, California three copies to each defendant and 40 copies to the United States Supreme Court.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

I declare under penalty of perjury of the laws of the State of California that the above is true and correct.

Executed March 24, 2007, at Los Angeles, California.

_____ _____

Type or Print Name Signature

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(4)

No. 06-1104

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

OLGA OSTOPOSIDES, et al.,

Petitioners,

v.

RICHARD GLIMP M.D. et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR REHEARING

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CONSTITUTIONAL PROVISIONS

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The petitioners herein respectfully move this court for an order (1) vacating its denial of the petition for writ of certiorari, entered on April 16, 2007, and (2) granting the petition. As grounds for this motion, petitioners state the following.

INTRODUCTION

If a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty. (Marbury v. Madison 5 U.S. 137; 178)

Hence, the decision to not grant certiorari review should be reconsidered by this United States Supreme Court as it allows the erroneous Ninth Circuit Court rulings to stand as law, which state, *"We know of no authority which even suggests that a plaintiff in a medical malpractice case is entitled to be represented by counsel,."* backed by the published Appellate Court opinions that state, *"As a general rule, there is no due process right to counsel in civil cases." (People v. $30,000 United States Currency (1995) Cal.App 4th 936, 942) (Iraheta v. Superior Court (1999) 70 Cal.App 4th 1500, 1503) (Fallis v. Dept. of Motor Vehicles (1960) 264 Cal.App. 2d 373, 383)*

These are rulings in opposition to the due process clause of the Fourteenth Amendment of the Constitution, and as

such, *"it is emphatically the providence and duty of the judicial department to say what the law is; courts are to decide which is the governing law if two laws conflict, and because the Constitution is superior...the Constitution...must govern the case to which they both apply" (Marbury, supra)*

REASONS FOR GRANTING REHEARING

I. The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

In the 3d vol. of his commentaries, p. 23, Blackstone states two cases in which a remedy is afforded by mere operation of law. "In all other cases," he says, "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded." ... "It is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress."

The *appellate court* perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others.

The conclusion from this reasoning is where a specific

duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for remedy.

If this be the rule, let us inquire how it applies to the case under the consideration of the court.

It cannot be presumed that any clause in the Constitution is intended to be without effect; and therefore such a construction is inadmissible, unless the words require it.

II. The question, whether an act, repugnant to the Constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.

That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis, on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority, from which they proceed, is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government, and assigns, to different departments, their respective powers. It may either stop here; or establish certain limits not to be transcended by those departments.

The government of the United States is of the latter description. The powers of the *appellate court* are defined, and limited; and that those limits may not be mistaken, or forgotten, the Constitution is written. To what purpose are

powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restricted? The distinction, between a government with limited and unlimited powers, is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation.

It is a proposition too plain to be contested, that the Constitution controls any *appellate court ruling* repugnant to it; or, that the *appellate court* may alter the Constitution by an *appellate court ruling*.

Between these alternatives there is no middle ground. The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary *appellate court rulings*, and, like other rulings, is alterable when the *appellate court* shall please to alter it.

If the former part of the alternative be true, then an *appellate court ruling* contrary to the Constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an *appellate court ruling*, repugnant to the Constitution, is void.

This theory is essentially attached to a written constitution, and is, consequently, to be considered by this court, as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.

If an act of the *appellate court*, repugnant to the Constitution, is void, does it, not withstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in

other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

It is emphatically the providence and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two law conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the Constitution; or conformably to the Constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If, then, the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the *appellate court*, the Constitution, and not such ordinary act, must govern the case to which they both apply.

Those who controvert the principle that the Constitution is to be considered, in court, as a paramount law, are reduced to necessity of maintaining that the courts must close their eyes on the Constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that a *ruling*, which, according to the principles and theory of our government, is entirely void; is yet, in practice, completely obligatory. It would declare, that if an *appellate court ruling* shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the *appellate court* a practical and real omnipotence, with the same breath which professes to restrict their powers within

narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

That it thus reduces to nothing what we have deemed the greatest improvement on political institutions -- a written constitution -- would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the Constitution of the United States furnishes additional arguments in favor of its rejection.

"No person," says the Constitution, "shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

Here the language of the Constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the *appellate court* should change that rule, and declare one witness, or a confession out of court, sufficient for conviction, must the constitutional principle yield to the *appellate court ruling*?

It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the Constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank.

Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.[1]

---

[1] Marbury v. Madison 5 U.S. 137; 163 – 180. The phrase *legislative act* in this opinion has been substituted by the phrase *appellate court ruling* to emphasize the interchangeable meaning of this institution regarding this opinion, and puts the opinion directly on point with petitioners' case.

CONCLUSION

Hence, the denial of review by this United States Supreme Court is allowing the law by the Appellate Court that is repugnant to the Constitution and thus void, to stand, usurping the Constitution and its due process privileges of hearing a party by counsel to every Ninth Circuit civil litigant under its jurisdiction in this land. Therefore, in the "interest of justice" and for the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioners pray that this court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted, May 11, 2007

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Petitioner in Pro Se

Renna Ostoposides
Petitioner in Pro Se

Harry Ostoposides
Petitioner in Pro Se

Socrates Ostoposides
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CERTIFICATE OF COUNSEL

Petitioners hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

Olga Ostoposides Petitioner in Pro Se	Renna Ostoposides Petitioner in Pro Se
Harry Ostoposides Petitioner in Pro Se	Socrates Ostoposides Petitioner in Pro Se

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. State of California. I am over the age of 18 and not a party to the within action.

On May 11, 2007, I deposited into the United States mail service in Torrance, California three copies to each defendant and 40 copies to the United States Supreme Court.

PETITION FOR REHEARING

I declare under penalty of perjury of the laws of the State of California that the above is true and correct.

Executed May 11, 2007, at Los Angeles, California.

_____ _____

Type or Print Name Signature

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